

***United States Court of Appeals
for the Second Circuit***



JOINT APPENDIX

77-4044

In The
United States Court of Appeals
For The Second Circuit

LOCAL 810, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

77-4069

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

vs.

EMCO STEEL, INC.,

Respondent.

*On Petition For Review and Cross-Petition For Enforcement of
an Order of the National Labor Relations Board.*

JOINT APPENDIX

Volume II, pp. 235a - End

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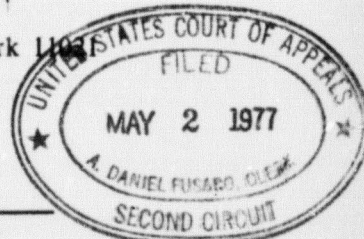
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TABLE OF CONTENTS

	Page
Chronological List of Relevant Docket Entries.	1a
Excerpts from Transcript of Proceedings Before Robert M. Schwarzbart, Administrative Law Judge.	2a
WITNESSES	
Seymour Erney:	
Direct.	7a, 248a
Cross	255a
Dano Coli:	
Direct.	34a
Anthony Schifano:	
Direct.	44a
Cross	239a
John Zito:	
Direct.	100a
Cross	
John Frick:	
Direct.	195a
Cross	207, 221a
Thomas McGovern:	
Direct.	292a
Cross	303a
<u>General Counsel's Exhibits:</u>	
3 - Collective Bargaining Agreement Between Emco Steel, Inc. and Local 810, I.B.T.	318a
4 - Telegram from Shopmen's Local Union No. 455 to Emco Steel, Inc.	328a
5 - Shopmen's Local Union No. 455 Authorization for Representation Card of Dano Coli.	330a

CONTENTS

	Page
6 - Shopmen's Local Union No. 455 Authorization for Representation Card of John Frick.	330a
10(a) - Shopmen's Local Union No. 455's Standard Collective Bargaining Agreement	331a
10(b) - Shopmen's Local Union No. 455's Proposed Agreement for 1975-1976	405a
10(c) - Shopmen's Local Union No. 455's Stipulation Extending Contract	433a
13(a) - Certificate of Disposition on Seymour Erney.	434a
13(b) - Certificate of Disposition on Jerry Meisner.	434a
13(c) - Affidavit Relating to Police Investigation.	435a
14(a) - Section 165.40 of the Penal Law of the State of New York.	436a
14(b) - Section 155.25 of the Penal Law of the State of New York.	437a
14(c) - Section 70.15 of the Penal Law of the State of New York.	438a
Administrative Law Judge's Decision dated September 2, 1976.	439a
Decision and Order of the National Labor Relations Board dated January 13, 1977	467a

1 A Right.

2 Q How much after the conversation?

3 A I would say --

4 Q A couple of days?

5 A A week, two.

6 Q Now, when did you sign the contract?

7 A few days after you signed the card?

8 A Yes.

9 Q Now, when did you -- when did you first speak
10 to Mr. Silverman about the union?

11 When was he first around in connection with
12 your conversation with Mr. Schifano?

13 Was it after or before?

14 A It was after.

15 Q It was after Mr. Schifano?

16 A Right.

17 Q And how long after Mr. Schifano was it?

18 A That, I don't know.

19 Q Well, was it a week, two weeks?

20 A I don't know.

21 Q A day or two?

22 A I don't know.

23 Q You do recall that several days after speaking
24 to Mr. Silverman, you signed a card?

25 MR. ZISKIN: Your Honor, Mr. Edelman has

* * *

* * *

1 JUDGE SCHWARZBART: Five minute recess.

2 (Whereupon, there was a short recess taken in
3 the hearing.)
4
5
6

7 JUDGE SCHWARZBART: On the record.

8 Before Mr. Pearl begins his cross examination,
9 Mr. Schifano, very briefly, you testified that initially
10 you approached the company with a copy of a recognition
11 agreement, an unsigned copy of which is in evidence as
12 General Counsel's Exhibit 9.

13 Do you recall that testimony?

14 THE WITNESS: Yes.

15 Well, I initially approached him with a telegram.

16 JUDGE SCHWARZBART: Well, yes, but soon thereafter.

17 One of your initial approaches you appeared with
18 a recognition agreement, according to your testimony?

19 THE WITNESS: Right.

20 JUDGE SCHWARZBART: Now, was there any subsequent
21 discussion concerning the recognition agreement, which
22 I believe you testified you left with management?

23 THE WITNESS: On the second meeting, we had some
24 discussion about it.

25 JUDGE SCHWARZBART: What date was that?

1 THE WITNESS: The 23rd.

2 JUDGE SCHWARZBART: Of?

3 THE WITNESS: Of September, 1975.

4 JUDGE SCHWARZBART: 22nd or 23rd in that period.

5 And who raised the topic, and what was said?

6 THE WITNESS: Well, I asked him whether --

7 JUDGE SCHWARZBART: You asked who?

8 THE WITNESS: I asked Cy --

9 I think it come up on a phone call, too, you
10 know, when we arranged for the meeting.

11 JUDGE SCHWARZBART: So, there was a phone call
12 that established, where the meeting was established?

13 THE WITNESS: Right.

14 JUDGE SCHWARZBART: What was said in the phone
15 call?

16 THE WITNESS: Well, I asked him if he was pre-
17 pared to sign it, and he said he hadn't had a chance to
18 speak to his lawyer, so he wouldn't sign the document.

19 MR. ZISKIN: I didn't hear the end of that.

20 JUDGE SCHWARZBART: Would the reporter please
21 read the answer?

22 (Whereupon, the requested answer was read back
23 by the reporter.)

24 JUDGE SCHWARZBART: Did you make any response at
25 that time, while you were on the phone?

1 THE WITNESS: No, Your Honor.

2 I don't recall making any response.

3 JUDGE SCHWARZBART: Then you testified that the
4 topic came up again at the meeting of September 22nd
5 or 23, thereabouts?

6 THE WITNESS: Right.

7 JUDGE SCHWARZBART: And what was --

8 Who raised the topic, and what was said?

9 THE WITNESS: Well, I'm not so sure that I testi-
10 fied to that, Your Honor.

11 I just said, before that I -- it came up at the
12 second meeting, but I'm -- I recall that it came up on
13 the phone conversation, and because on the -- on
14 September 23rd we practically started negotiation. as
15 we agreed over the phone. I didn't think there was --
16 I didn't bring it out any more.

17 JUDGE SCHWARZBART: Did there ever come a time
18 when you received a signed copy of the recognition
19 agreement from the company?

20 THE WITNESS: No, Your Honor.

21 JUDGE SCHWARZBART: Mr. Pearl?

22 THE WITNESS: I, after the first session, we have
23 a clause in the contract that's almost the same, it's a
24 recognition of the Union as the sole bargaining repre-
25 sentative of the employees of the company.

1 So, I didn't bring it out any more.

2 JUDGE SCHWARZBART: Mr. Pearl?

3 CROSS EXAMINATION

4 Q (By Mr. Pearl) Mr. Schifano, how long have you
5 been employed with the Union?

6 A I'm not employed by the Union, I'm employed by
7 the Apprenticeship Fund.

8 Q What's the difference?

9 A Well, I'm a training coordinator for the Appren-
10 ticeship Fund of Local 655.

11 The Union is a separate entity. It's a separate --

12 Q But, nonetheless, you testified that you have
13 authority to negotiate for the Union?

14 A Yes.

15 Q But you're not employed by the Union?

16 A No.

17 My position with the Union is a non-salary position.

18 Q You stated on your direct examination that a
19 Union member brought to your attention Emco?

20 A Yes.

21 Q Who was that member?

22 A I don't know his last name.

23 His first name is Pat.

24 Q When was that?

25 A Somewhere, sometime in September. Beginning of

240a

1 September.

2 Q Isn't it a fact that you've already stated that
3 you knew Mr. Meisner and Mr. Erney, quite some period
4 of time before September, 1975?

5 A Yes. I knew them.

6 Q Isn't it a fact that you stated that you knew
7 them from a place called G. L. G?

8 A Yes.

9 Q Didn't you, as a fact, know that G. L. G. closed
10 up?

11 A Yes.

12 Q And that Mr. Erney and Mr. Meisner left there and
13 went elsewhere to open a business?

14 A No. I didn't know that they opened a business
15 until I saw them in the place.

16 Q And that was when?

17 A That was --

18 Well, I knew it by somebody else telling me on
19 the 15th, when I had the cards signed, but the first
20 time I seen them in the place was the 18th or the 19th,
21 sometime after the card signing.

22 Q Do you service or have reason to be in the
23 vicinity of 961 Grand Street, on a regular basis, in
24 that area of Brooklyn?

25 A Yes. I have reason to be around that area.

* * *

CSA Reporting

* * *

1 Q Did you tell Mr. Frick --

2 Strike that.

3 You heard Danny Coli testify, did you not?

4 A Yes.

5 Q And he testified, did he not, that he didn't date
6 his card, did he not?

7 A I don't remember if he testified to that.

8 Sorry.

9 Q Did you, in fact, date his card?

10 A Can I see the card?

11 If I see the card, I'll tell you right away
12 whether it's my writing or his writing.

13 (Handing document to witness.)

14 A No. I didn't date this card.

15 Q Did you write anything on that card, Mr. Schifano?

16 A Yes.

17 Q What did you write on that card?

18 A I wrote the word, "Emco, Brooklyn, New York,
19 mechanic," and the telephone number.

20 I also wrote the address in the back, Dan Coli,
21 5850 81st Street, Queens 11373.

22 Q But you didn't put the date?

23 A No.

24 Q Do you know who did put the date?

25 A Well, I saw Danny signing, and I asked him to

1 put the date, so I -- I didn't see him actually put the
2 date, but it would appear that --

3 Q So, you don't know who put the date on the card?

4 A No, I don't know.

5 Q What did you do with the card after he signed it?

6 A After he signed it?

7 I mailed it to a lawyer, I think.

8 Made copies and mailed it to a lawyer.

9 Q You didn't mail it right then and there.

10 What did you do with the card?

11 A Right then and there, in the place?

12 Q Right there, in the place, in the yard.

13 A I think I put it in my pocket.

14 Q You put it in your pocket?

15 A Yes.

16 Or in my briefcase.

17 I really don't remember exactly what I did with it.

18 Q I show you the G. C. Exhibit 6.

19 Did you see Mr. Frick sign his name on that card?

20 A Yes.

21 Q Did you tell him what the card was?

22 A Yes.

23 Q Did you tell him the purpose of the card?

24 A Yes.

25 Q Did he write his name on the back?

1 A Yes.

2 I asked him to do so.

3 Q Did you ask him --

4 Did he ask you what the reason was for putting
5 his name on the back of the card?

6 A No.

7 When I asked him, I explained him why I want it.

8 Because when you sign, sometimes, you know, you
9 can't spell your name. So, I wanted him to put his
10 name in printing so we could -- we'll know his exact
11 name.

12 Q Did you not tell him the --

13 A It's a common practice.

14 When we organize somebody, we do this.

15 Q Was the card given to him in two parts, or just
16 the one part we have here?

17 A Two parts.

18 Q Is there another part to the card, or just that
19 part?

20 A No. This is the only thing I gave him.

21 Q The name is --

22 You didn't ask him to put the name on the back
23 for the purposes of a return mailing to him?

24 A No.

25 I asked him to put the -- to spell his name in

1 the back, so we'll know his exact name, and his address.

2 And I do that every time.

3 Q Why didn't you ask him to put his address on the
4 front?

5 A On the front?

6 Q It's not noted.

7 If you told him what the card was, I presume you
8 instructed him on how to fill it out.

9 A I don't know why I didn't ask him to put his name.

10 Q Isn't it a fact that you wanted his address on
11 the back so that you could mail him certain information,
12 regarding the Union?

13 A No. No.

14 There was --

15 I know why I asked him, and I just told you.

16 Q I asked you a question.

17 A Can you repeat the question?

18 Q Isn't it a fact that you asked him to put his
19 name on the back so that you could mail him something
20 in return?

21 A No.

22 Q But, yet, his address is not on the front, on
23 the face of the card?

24 A Right, not on the front.

25 Q Did you fill out the rest of the card?

1 A The rest of what, the --

2 Q The name of Emco?

3 A Yes, I did.

4 And I --

5 Brooklyn, mechanic, and telephone number, none.

6 Q Okay.

7 What did you do when he gave you the card back
8 after signing it?

9 A I --

10 Q Did you do likewise, put it in your pocket?

11 A Yes.

12 Or in my briefcase.

13 I don't remember where I put it. Whether I put
14 it in my pocket or my briefcase.

15 Q Did you say anything to Mr. Frick after he signed
16 the card?

17 A Yes.

18 Q Regarding it?

19 A Yes.

20 I told him not to say anything to anyone, because
21 we will send a telegram to the company and then the
22 company will know.

23 Q Did you, personally, send a telegram?

24 A No.

25 The company -- The lawyer's office did.
* * *

* * *

1 Q (By Mr. Pearl) Do you recall your testifying
2 that a Mr. Stanberg was present at one of these meetings?

3 A Yes.

4 Q You testified that he took little part, if any?

5 A I don't believe he took any part in the negotia-
6 tions. Just general conversation.

7 Q He did not involve himself in the discussion at
8 all?

9 A No.

10 MR. PEARL: One moment, Your Honor.

11 JUDGE SCHWARZBART: Off the record.

12 (Discussion off the record.)

13 JUDGE SCHWARZBART: On the record.

14 Q (By Mr. Pearl) Were you present in the Courtroom
15 when Danny Coli testified?

16 A Yes.

17 Q Do you recall his testimony with regard to the
18 reason he was laid off?

19 A I --

20 Q Do you remember what he said?

21 A Yes, I remember what he said, part of it.

22 Q What did he say?

23 A He said, there was no more work, that the job
24 was finished, and he was laid off.

25 Q Right.

* * *

CSA Reporting

* * *

1 MR. PEARL: No, I have no objection.

2 JUDGE SCHWARZBART: Mr. Ziskin?

3 MR. ZISKIN: I have no objection to the documents
4 being admitted.

5 JUDGE SCHWARZBART: They're received.

6 (Whereupon, the above referred to
7 were received and marked General
8 Counsel's Exhibits 10-A-C in evidence.)

8 JUDGE SCHWARZBART: I'm not sure that 11 has been
9 received.

10 That was a Cardex entry --

11 MR. EDELMAN: -- of Gerald Meisner?

12 JUDGE SCHWARZBART: Yes.

13 MR. EDELMAN: My notations indicate that it has.

14 JUDGE SCHWARZBART: Off the record.

15 (Discussion off the record.)

16 JUDGE SCHWARZBART: On the record.

17 MR. EDELMAN: I will, at this time, move that
18 Exhibit 11 be admitted into evidence.

19 JUDGE SCHWARZBART: The General Counsel has
20 moved that General Counsel's Exhibit 11, the Local 455
21 Cardex entry for Jerry Meisner, be received into evidence.

22 Is there any objection?

23 MR. SIZKIN: Your Honor, my only objection is as
24 to relevancy and materiality with respect to the document.

25 JUDGE SCHWARZBART: You don't dispute the authenticity

* * *

* * *

reasons, the Respondent-Company asks the Court to dismiss the complaint in its entirety for lack of presentation of a prima facie case.

JUDGE SCHWARZBART: I'm going to deny the motion at this time.

Are you prepared to proceed?

MR. PEARL: We are.

JUDGE SCHWARZBART: Call your first witness, please, Mr. Pearl.

MR. PEARL: I call Mr. Erney to the stand, your Honor.

Whereupon, SEYMOUR ERNEY, was called as a witness, and having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

DIRECT-EXAMINATION

BEST COPY AVAILABLE

BY MR. PEARL:

Q Would you please state your full name?

A Seymour Erney.

Q Mr. Erney, are you a principal officer of the Emco Steel Company?

A Yes, I am.

Q Who are the other principal officers, if any?

A Mr. Jerry Meisner.

Q When did you start this business?

1 A. We started our business in September of 1974.

2 Q. At what address?

3 A. 961 Grand Street, Brooklyn, New York.

4 Q. What type of business is this?

5 A. We are structural steel fabricators.

6 Q. Would you explain that to the Court?

7 A. Yes.

8 Structural steel fabrication entails putting
9 holes in beams, cutting beams to size, coping and
10 following plans directed by engineers enabling the
11 steel structure to go up, putting steel into buildings.

12 Q. Would you describe briefly, sir, the physical
premises at 961 Grand Street?

13 A. Yes.

14 We have a -- we have a store front office
15 facing Grand Street, which is a large office with a
16 private office to the right as you are walking into
17 the office.

18 In the rear we have our plant, which is on
19 actually DeVoe Street.

20 Q. Fine.

Describe the plant facility?

21 A. Yes.

22 The plant facility is approximately 90 x 120
23 under a roof, which has a crane structure.

* * *

1 A. September of 1975?

2 Q. Yes.

3 A. Mr. Tom McGovern, John Frick and Danny Coli.

4 Q. Now, you said you started in business in 1974,
5 in late 1974.

6 Is that correct?

7 A. Yes.

8 Q. When was the first time, Mr. Erney, that you
9 learned of Local 455?

10 A. I knew of Local 455 about 16 years ago, that is,
11 when I first entered the industry.

12 Q. Well, where was that?

13 A. I was working for a firm called Lafayette Steel
14 Fabricators in the Bronx for about four or five years
15 and then I went on to work for a company called GLG
16 Iron Works for the balance of my career, at that time
17 about another 15 years I was working for GLG Iron Works,
18 who's shop was a member of Local 455.

19 Q. What did you do at GLG Iron Works?

20 A. I was an estimator.

21 Q. Were you a union member of --

22 A. No.

23 Q. -- Local 455 at GLG?

24 A. No.

25 Q. I see.

Did you participate as a representative of management at GLG when they had any dealings with a union?

A. No.

Q. Now, going back to the summer and the fall of 1975, the german period of time involved in this matter --

A. Yes.

Q. -- how did you come to learn about Local 455's efforts at Emco Steel?

A. On the 17th of October -- I mean on the 17th of September, I received a telegram from Local 455 stating that they had an overwhelming majority of the men in my plant.

Q. I show you G. C.'s Exhibit 4.

Is this the telegram that you're referring to?

(Handing.)

A. Yes, it is.

MR. EDELMAN: May I look at that, please?

MR. PEARL: Sure.

(Handing.)

MR. EDELMAN: Okay.

Thank you.

BY MR. PEARL:

Q. And what day did you say you received that, on or

about?

A. September 17th.

Q. Now, what did you do after you received the telegram, Mr. Erney?

A. I did really nothing.

I put it in my safe. I left it alone.

The telegram was false; it wasn't true.

Q. When was the next time or event or circumstance wherein Local 455 contacted you again?

A. A couple of days later, I think on September 22nd or September 23rd, Mr. Schifano came into my office.

He asked me, at that time, whether or not I received the telegram.

Q. What did you respond?

A. I told him, "Yes, I have received the telegram that you sent."

Q. And what did he -- and what did he demand of you or say to you?

A. Well, he wanted me to -- he wanted me to sign up with Local 455.

I told him that he does not have any majority of my shop because the day after he was in my plant, Mr. McGovern came to me and he told me that Mr. Schifano had called him to meet him in some bar that evening to discuss something about Local 455 and Unico.

* * *

McGovern told him, although it certainly can be introduced to show where Mr. Erney acted in a certain way.

JUDGE SCHWARZBART: I think your objection is too technical to be meaningful, so I'm going to overrule it.

MR. EDELMAN: Very well, your Honor.

JUDGE SCHWARZBART: I would, also, note that the witness can certainly testify as to what Mr. McGovern told him without being subject to the hearsay rule.

MR. PEARL: I was going to say that, your Honor, which I think is quite clear.

BY MR. PEARL:

Q You were saying that you were speaking to Mr. Schifano --

A That Mr. McGovern told me that he had spoken to Mr. Schifano in the bar and Mr. Schifano asked him to sign a card for Local 455 and Tommy, my foreman, refused, he didn't want to sign a card.

Q What else did you say to Mr. Schifano in this discussion?

A And -- excuse me?

Q What further conversation was there with you and Mr. Schifano at this time?

1 A And I, also -- and I, also, told him that
2 Mr. John Frick came in the following day and told me
3 that Mr. Schifano was in the plant and he gave him --
4 and John gave his name and address to Tony Schifano
5 for information regarding the union and he did not sign
6 a card.

7 Danny Coli, who was working for me at the time,
8 was only a temporary employee. I really didn't know
9 whether he had signed a card or not, because I never
10 spoke to him about anything.

11 He was only a temporary employee in any case.
12 So the three people who were working with me at the
13 time, there was no majority shown.

14 Q Now, you said that Mr. McGovern is a foreman?

15 A Yes.

16 Q When was he hired?

17 A Mr. McGovern was hired, I recall, in April of
18 197 -- in April.

19 Q Did you hire him?

20 A Yes, I did.

21 Q All right.

What did -- what was the discussion at the time
you hired Mr. McGovern, that is, as to his employment
with Emco or not?

A Then Mr. McGovern came -- when we asked

* * *

Q Now, subsequently did he come to work for you?

A Yes, subsequently Tommy came to us and he said that he needed -- he said that he needed a welder in the plant, whether we can get somebody.

Maybe Danny was here a couple of weeks ago, maybe he's still available to come to work for us.

Jerry called Danny and Danny was not in. He spoke to his wife, from what -- and his wife must have relayed the message because the next day Danny came down.

He went to Tom.

He asked Tom whether or not we had called.

Tom said yes, I suggested that they call you, which we did, to go into the office to speak to Sy.

Q Did he -- did he --

A He came in --

Q Pardon me.

Did he go into the office eventually to see you?

A Yes.

Danny Coli came in to see me, yes.

Q And was he hired?

A Yes, he was.

Q What did you say to Danny at that time and what did he say to you, that is, regarding his employment?

A I told Danny -- Danny asked me, he said, "I

understand that Tomay could use a man in the shop."

I said, "Yes, we could use a man in the shop."

He said, "Do you know I'm on strike now?"

I said, "Yes, Danny, I know you're on strike."

He said, "I'm working for Brightman Iron Works."

He said, "They can call me back at any time once the strike is over."

I said, "Well, that's okay. We only have a little work for you and we can put you on on a temporary basis."

He said, "Fine. A temporary basis fine," he said, "Because the strike could be over any time or any day and I can go back to work for Brightman and it's better than collecting unemployment insurance at this point because I'm on strike and I'm not entitled to any unemployment insurance for awhile."

I asked him how much he was making at Brightman.

He told me about \$280, I said, "~~Danny~~, I can't pay you that kind of money. I can give you \$220 with no fringe benefits involved."

~~He said, "Look, Sy, I know you a long time.~~
Whatever you give me is fine. I just want to -- I appreciate what you're doing for me."

As a matter of fact, he said, "I have to ask you

one other favor, would you mind lending me some tools because of my tools are back at Brightman Iron Works?"

I said to him, "Fine; all right."

I know him a long time.

I said, "Fine. I'll lend you some tools," which I did.

It worked out very conveniently for both of us because I only had some work and Danny knew that he would go back to Brightman, he told me that he was going to go back to Brightman when the strike was over.

It was amicable for both of us on a temporary basis.

That's how he was hired. That's the basis on which he was hired.

Q What day did he work up to and including?

A I think about --

Q About.

A I think the first or second or third day in October was the finish of his employment.

We had no more work for him. We told him that we had no more work for him.

Q What was his particular type of work?

A He is a -- Danny Coli is a certified -- he's a welder, a certified welder. We had no more work.

We paid him all of the wages that were due him.

1 He said, "Thank you for having me."

2 We left pretty amicably because we're pretty
3 friendly with each other.

4 Q There were no hard feelings?

5 A No.

6 Danny and I know each other for a long time.
7 Danny and I are big Jet fans, as a matter of fact.

8 JUDGE SCHWARZBART: How long do you know
9 Danny?

10 THE WITNESS: I know Danny for about 18
11 years.

12 MR. PEARL: All right.

13 BY MR. PEARL:

14 Q Now, this conversation with Mr. Schifano on
15 the day that he came by to ask you about the telegram,
16 was there anything else discussed between you two that
17 day, that is, other than what you previously stated?

18 A Not that I recall, no.

19 Q How long did this discussion take?

20 A Oh, the whole thing was maybe ten minutes.

21 We were so busy, Jerry and I were so busy, we
22 were running around, we really didn't have any time to
23 talk.

24 Tony said to us, "All right, I'll come back
25 another time."

Q And did Mr. Schifano come back or call another time?

A About a week later he came -- about the 30th of September he came in.

He had a manila envelope with him. He had a piece of paper on top of the manila envelope which was loose, which he said was a recognition agreement.

And what was in the manila envelope was a contract, what he said was a contract with Local 455,

He threw it on my desk and he said to me, "Read it and sign it."

Q Now, I show you - pardon me.

MR. PEARL: May we go off the record for a minute, your Honor?

JUDGE SCHWARZBART: Yes.

Off the record.

(Discussion off the record.)

JUDGE SCHWARZBART: Back on the record.

BY MR. PEARL:

Q I show you General Counsel's Exhibits 10-A, 10-B and 10-C.

Are these the papers, to your recollection, that were dropped in front of you?

(Handing.)

Absent is the manila envelope. See if you can

recall.

A. It looks like the contract that was given me. I really don't know whether this is the one.

But this looks like the contract that was thrown on the desk, yes.

Q. Now, what were Mr. Schifano's comments to you at the time?

A. He threw it on the desk and he said, "Read it and sign it."

I said to him, "Tony, you don't represent the men in my shop."

Q. What did he say to you in reply?

A. Nothing.

Our conversation was -- our conversation became very vague at that point.

We began to talk about the generalities in the industry, about the fact that this was a strike that 455 was going through and times were bad and this looks like it's going to be a long strike.

In turn, it did turn out to be the longest strike in the history of Local 455.

We talked in generalities. We had a cup of coffee.

Jerry was running in and out of the shop because we were busy at the time.

1 We spoke about a half hour just in generalities.

2 We had no more time to talk, because I was
3 really busy and Jerry was really busy.

4 I told Tony that we had no time to talk.

5 Tony left and he said, "I'll get in touch
6 with you some other time."

7 Q Did you sign the recognition agreement that he
8 brought with him that day?

9 A No, never.

10 Q Did you sign a contract?

11 A No.

12 Q Did you make any notes or initial any acceptance
13 to anything in the way of a contract proposal made to
14 Inco Steel?

15 A No.

16 Q Did you offer any proposals --

17 A No.

18 Q -- to Mr. Schifano?

19 A No.

20 Q Do you know what the word "negotiation" means,
21 Sy?

22 A No.

23 To me, the word "negotiation" would mean if
24 there were two people, two parties, talking to each
25 other to try to -- to try to bargain out an agreement,

a give-and-take-type thing, I suppose.

That would be "negotiation."

Q In that sense of the word as you define it, did you negotiate with Mr. Schifano that day?

A No, I did not.

Q Now, you said Mr. Schifano left?

A Yes, Mr. Schifano left, right.

Q All right.

And did he in fact come to the shop again?

A Mr. Schifano --

Q Or did he communicate with you again?

A Mr. Schifano came down to the plant about a week later.

He asked me whether or not I had signed a stipulation agreement and the contracts.

I said, "Tony, no, I did not sign anything. You don't represent my men."

And then he said to me, "Well, where's Danny?"

I said, "Danny doesn't have any more work here anymore. There's no more work for him. I have no idea where Danny is. Maybe he went back to Brightman."

I said, "I have no idea."

Q What day was this?

Can you recall what day this was?

A That was -- it was, like, the first week in

1 October, the beginning of October.

2 I don't know the exact date.

3 Q And how did this discussion on this day end?

4 This was a visit; correct?

5 A This was a visit by Mr. Schifano, that's
6 correct.

7 He said to me, "You know, if you don't sign the
8 contract, there is going to be -- there will be
9 difficulties and troubles, you know, because labor
10 lawyers are expensive, he said.

11 He went into a whole thing.

12 As a matter of fact, when he came in at that time,
13 I was on my way out of the office and I had an
14 appointment to keep.

15 I told Tony that I have no time to speak to
16 him, he doesn't represent my men.

17 And then he said to me, Reiterated to me again
18 that labor lawyers are expensive and that you get
19 yourself involved if you don't sign a contract.

20 I said, "Tony, I can't speak to you. I'm on
21 my way out."

22 He left and I went to my appointment.

23 Q Did Mr. Meisner have any participation in this
24 discussion?

25 A Jerry was there, yes. Jerry was there.

He was in and out of the shop really, coming in and out.

I don't know exactly when he was there and when he wasn't there.

He was there sometime, yes.

Q Was another -- was a date set for another meeting --

A No.

Q -- or a communication?

A No.

Q None whatever?

A None whatever.

Q After this day, which you believe to be the first week in October, did you ever see Mr. Schifano again?

A No, I did not see him.

He called me on the phone a couple of weeks later.

He asked me whether I signed the contract.

I said, "Tony, no, I didn't sign the contract."

And he said, "You know, there's going to be trouble. You're going to get involved with lawyers."

I told him again, "You don't represent the men in my shop."

He said to me -- and he hung the phone up on me.

1 Q Did you --

2 A And that was the last I heard of Tony -- from
3 Tony Schifano.

4 Q And when was the next communication or telephone
5 call or letter regarding Local 455?

6 A After that telephone call, I received something
7 in the mail from the NLRB saying that I -- filing some
8 charges about some unfair labor practices.

9 Q And that was on behalf of Local 455?

10 A And that was on behalf of Local 455 from the
11 NLRB, that's correct.

12 MR. PEARL: Those are all of the questions
1 that I have of Mr. Erney at this time.

MR. EDELMAN: I'd like a five-minutes
2 recess, your Honor, at this time.

JUDGE SCHWARZBART: Five-minute recess.

(Recess taken at 11:45 A. M.)

JUDGE SCHWARZBART: Back on the record.

Mr. Edelman, please proceed.

MR. EDELMAN: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. EDELMAN:

Q Mr. Erney, it was you that hired Mr. McGovern.
Is that correct?

A Yes.

* * *

Mr. Edelman called Mr. Erney as his witness and went into the signature on the CIO contract and now he's seeking to go into the same matter again.

It's been --

JUDGE SCHWARZBART: Well, the witness has raised the question of his knowledge of the union's majority status, so I'm going to allow it.

BY MR. EDELMAN:

Q You were -- you were present when Mr. Frick signed his authorization card, weren't you?

A I don't know what you mean by "present."

Q Well, you were there in the same office that Mr. --

A We were in the same room. My room is a very large room.

Q Right.

A As you know, Mr. Edelman, because you were in my office, it's as long as -- it's longer than this room here.

Mr. Silverman was speaking to some of the people in the back, way in the back, and I was in the front.

I don't know about who signed what. I couldn't tell you.

Q Did you see them sign the cards?

A I didn't see anyone sign them, no.

Q Well, let me ask you this:

You were in the -- you run the shop and Mr. Silverman at that time was a stranger to you, I take it, or relative stranger to you?

A At the time of what?

Q Well, at the time that these -- well, at the time of the discussion that took place between Mr. Silverman and these employees, had you met Mr. Silverman before this?

A No.

Q All right.

Now, I assume that if Mr. Silverman was talking to your employees in the same room that you were in, I take it Mr. Silverman came in the office through the Grand Street side, which is the store front side; is that correct?

A No.

Q He didn't?

A No.

Q Well, he was in your office; is that correct?

A He came in in the back way.

I assume he came in in the same way Mr. Schifano comes in, the back way.

Q He was in your office, is that correct, on that day?

A. He was in the back of the room, yes.

Q. Now, you saw him talking to your employees?

A. Yes.

Q. Did he ask permission to talk to your employees?

A. Yes, he asked permission to speak to my employees; yes.

Q. He asked you for permission?

A. Yes, he did.

Q. And did he tell you why he wanted to speak to your employees?

A. Now, when is this time?

When are you talking about?

Q. Well, at the time the authorization cards were procured.

I don't know when the authorization cards were procured.

I couldn't answer that question for you.

Q. Well, a man came in.

A. Yes.

Q. To introduce himself to you as a representative of Local 810?

A. Yes, he did.

Q. And what did he say to you?

A. He said to me that, "Mr. Erney, I represent the men in your shop."

I said to him, "How?"

I had just gone through this with Mr. Schifano. He listed the men who were working for me at the time.

I said, "What do you have to show me? What kind of proof do you have?"

He showed me five cards, five authorization cards, what you call an authorization card.

You call them authorization cards. He showed me five cards.

He said, "These are the men who signed cards for Local 810 to represent them in negotiations with Ego Steel."

That's what he said to me.

Q I see.

A And that was on --

Q Well, was this before --

JUDGE SCHWARZBART: Well, let's hear the rest of the answer.

MR. EDELMAN: Yes.

A That was on, I think, the 3th of October, or, in thereabouts.

I don't know exactly what day it was.

Q Well, now, was that before he spoke to these employees that he made this representation to you or was that after he spoke to these employees that he made

the representation to you?

A. Say that again, please.

Q. Well, you say he told you that he represented the employees and showed you cards.

A. Yes, he did.

Q. Now, did he make this representation and show you the cards before he spoke to your employees or after he spoke to your employees?

A. I have no -- he must have spoken to my employees prior to the cards being signed, because he showed me the cards.

I didn't know that Mr. Silverman was there.

Q. Well, you testified that on the day he showed you the cards, you saw him talking to your employees in the same room.

Is that correct?

A. Afterwards, right, yes.

Q. That was after he showed you the cards or before?

A. After he showed me the cards.

Q. All right.

A. Right.

JUDGE SCHWARZBART: Just so the record is clear, which room is this?

THE WITNESS: Your Honor, it's hard to -- the room, your Honor, is very large. My office is a

* * *

BY MR. EDELMAN:

Q Is this Mr. Jerry Silverman, by the way?

A Jerry Silverman?

Q What's Mr. Silverman's first name?

A Mr. Steve Silverman.

Q Steve Silverman; I'm sorry.

Q Now, did you look at the date that these authorization cards were signed?

A Did I look at the date?

Q Yes.

A To tell you the truth, I don't recall whether I looked at the date or not.

Q What I did do, I took the cards and I match them with the W-4 Forms that I have in my payroll records to see whether or not these were cards that were, you know, the same -- the same signatures.

A That's what I really did.

Q And --

A So now I was aware of whether or not somebody was trying to pull a fast one over me.

Q Now, is it your testimony that you did not witness employees sign authorization cards?

A I didn't see anybody sign the authorization -- what you call "authorization cards."

JUDGE SCHWARZBART: Just one moment.

1 THE WITNESS: Yes, sir.

2 JUDGE SCHWARZBART: Now, Mr. Erney, you
3 testified that Mr. Steve Silverman came in and asked
4 if he could speak to your employees.

5 THE WITNESS: To speak to my employees?

6 JUDGE SCHWARZBART: Yes, he asked for
7 permission.

8 THE WITNESS: Yes, after he showed me the
9 cards, he did, yes, he asked me whether he could speak
10 to the men.

11 I spoke to Mr. Silverman for awhile, and
12 then he asked me if he could speak to my men.

13 JUDGE SCHWARZBART: I see.

14 BY MR. EDELMAN:

15 Q Now, once he showed you these cards, did he ask
16 you for recognition at this time?

17 A Yes.

18 He said to me that the men that they want
19 Local 810 to represent them in negotiations for a
20 contract with Emco Steel?

21 Q What did you say to him at the time.

22 A I said to him, "Well, Jerry isn't here now.
23 I really don't know that -- Jerry will be back
24 tomorrow. He's outside.

25 "I have to speak to Jerry about this whole thing.

1 I don't know what to do. I have to speak to my
2 partner. He'll be in tomorrow."

3 Well, Jerry came in the next day, and
4 Mr. Silverman came in the following day with the
5 contract, with the union contract.

6 He handed me the contract.

7 He said to me to look it over.

8 Jerry and I looked it over for awhile. We
9 just -- briefly, you know, just a little bit.

10 And we said, "Look, we really have to look over
11 the contract."

12 We went back to Jerry's house that evening. We
13 went over the contract as best we could on a xeroxgraph
14 of it.

15 We had many questions about the contract. We
16 thought it would be a good idea for us to speak to
17 Mr. Irving Spitner, who is around the corner from us,
18 who is an 810 shop.

19 In other words, his men are represented by
20 Local 810, you know, and ask him what kind of
21 negotiations that he had with Local 810.

22 We spoke to Mr. Spitner. He told us about the
23 negotiations that he had had with Local 810. He
24 pointed out some things in the contract.

He said that it would be a good idea if we would

* * *

1 to see the payroll record for that. I don't know
2 exactly.

3 Q Well, on or about when was he hired?

4 A I would say -- I don't recall. I would have to
5 see.

6 Q Well, was he hired in the summer of 1975 or was
7 he hired in the spring of 1975?

8 A Can I see the payroll record and I'll tell you?

9 Q Sure, sure.

10 (Handing.)

11 A Mr. Frick came on -- was hired by us the week
12 ending June 20th.

13 Q All right.

14 Now, I take it that Mr. McGovern was covered
15 by the Local 810 contract?

16 A When is that?

17 When?

18 Now?

19 Q No.

20 I take it that when you signed the -- Mr. McGovern,
21 for example, was one of the cards that you saw; is
22 that correct?

23 A That's correct.

24 Q Okay.

And he was covered by the Local 810 contract at

the time of execution; is that correct?

A. My assumption would be yes, he would be covered.

Q. I see.

And I take it that he was paid with a wage scale in accordance with the 810 contract; is that correct?

A. We paid Tommy more than what -- because he's our foreman, we pay him more money.

Q. He received the same benefits as other employees under the 810 contract; is that correct?

A. Under the 810 contract, he would receive the same benefits, yes.

Q. And the same holidays?

A. Under the contract he would receive the same holidays, yes.

We give Tommy extra days.

Q. You give him extra days?

A. Yes.

Q. But he gets at least those in the contract?

A. Yes, that's correct.

Q. And I take it that he is hourly paid, as the contract workers are?

A. Yes.

Q. And I take it if he works overtime, he, also,

receives time and a half, as provided for by the contract?

A Yes, that's correct.

Q And I take it that he is a member of Local 910 or -- strike that.

I take it that dues are deducted from his paycheck by you; is that correct?

A Yes, that's correct.

Q Okay.

He executed, I assume, a check-off authorization for you to do this?

A That's correct.

Q Now, you testified that you worked for GLG for 15 years.

Is that correct?

A Approximately 15 years, yes, that's correct.

Q And Mr. Meisner, also, worked for GLG.

Is that correct?

A That's correct.

Q About how long did he work for GLG?

A Jerry came to work for them I think a year or two before I did. I don't know exactly how long.

Q And worked continuously for GLG until he left to form Emco Steel; is that correct?

A We worked together from the time that I went

there, yes, that's correct.

Q Now, who ran GLG?

Who was the boss at GLG?

A Mr. Irving Gurian.

Q Gurian?

A Yes.

JUDGE SCHWARZBART: How do you spell that?

THE WITNESS: G - U - R - I - A - N.

BY MR. EDELMAN:

Q Now, did you always work for Mr. Irving Gurian at GLG?

A Yes.

Q You did?

A Yes, that's correct.

Q Isn't it a fact that there was a period of time when Mr. Gurian passed away?

A Oh, yes.

Then I was working for Mrs. Gurian.

Q Mrs. Gurian, right.

Now, she was not working at the -- in other words, she was like an absentee owner, so to speak; is that correct?

MR. PEARL: Your Honor?

JUDGE SCHWARZBART: Yes.

MR. PEARL: I object to the form of the

question.

JUDGE SCHWARZBART: I --

MR. EDELMAN: I think, your Honor, that the question is clear enough.

I think that people know what an absentee owner is. I'll rephrase it, your Honor.

JUDGE SCHWARZBART: I'll let the witness answer the question.

A. I don't know what you mean by "absent"?

Q. She wasn't there everyday, was she?

A. No, she was not there everyday.

Q. So someone had to handle the day-to-day operations at GLG?

A. Yes, that's correct.

Q. Did you handle the day-to-day operations, by and large?

A. Under the supervision of Mrs. Curian, yes.

Q. And, also, Mr. Meisner handled the shop end of the operations, would that be fair?

A. Mr. Meisner began to come into the office more and more.

Q. I see.

Would it be fair to say that you and Mr. Meisner effectively ran GLG under Mr. Curian's supervision?

1 A We ran it under Mrs. Gurian's supervision,
2 right.

3 Q And how long did you run it under her
4 supervision?

5 MR. PEARL: Your Honor, I'd like to know
6 where counsel is going on this line of questioning.

7 I find it going far astray from any
8 relevant issues that are before this tribunal.

9 MR. EDELMAN: I'll connect it very shortly,
10 your Honor.

11 MR. PEARL: It seems to go wailing out on
12 a tangent as to the operations of another business.

13 Although it's admitted that Mr. Erney
14 had a prior history of working there, he admitted he
15 worked there, I fail to understand what the line of
16 questioning is leading up to, your Honor.

17 JUDGE SCHWARZBART: I'm going to excuse
18 the witness from the stand for a few moments and ask
19 him to leave the courtroom and close the door behind
20 you.

21 THE WITNESS: Yes, sir.

22 (The witness is excused.)

23 JUDGE SCHWARZBART: Mr. Edelman.

24 MR. EDELMAN: Well, your Honor, we have
25 some very serious credibility questions, as you,

(Record read.)

BY MR. EDELMAN:

Q You may answer the question, Mr. Erney.

A Excuse me?

Q How long were you running it under Mrs. Gurian's supervision?

A We were working for Mrs. Gurian for about a year, approximately.

Q And what year was that?

A 197 --

Q Would that be four and five?

A That was a year prior to going into business. It was September of 1973 'til the end of August of 1974, approximately.

Q Now, Mr. Erney, isn't it a fact that during that period of time you and Mr. Meisner converted a substantial amount of steel from Mrs. Gurian?

A I don't understand what you're saying.

Q You stole a certain amount of scrap steel and sold it?

A No, we didn't steal anything.

Q You didn't steal anything?

A No, we didn't steal. I don't know what you're saying.

Q Did you sell scrap steel -- did you sell steel --

that belonged to Mrs. Gurian and pocket the money yourselves?

A. We sold steel.

Mrs. Gurian told -- said that she didn't know about it, selling of the scrap.

We sold the scrap. We took the money.

Inadvertently at the end of the whole thing, we gave back all of the scrap that was -- all of the dollars for the scrap, we gave it back to Mrs. Gurian.

Q. Well, isn't it a fact that before you gave them back, you were indicted and pleaded guilty to conversion of steel?

A. Yes, that's correct.

Q. Isn't it a fact that you were conditionally discharged by the -- I guess it would be the criminal court, 120 Schermerhorn Street in Brooklyn and that the condition of your discharge was that you pay back the money to Mrs. Gurian?

A. That's correct.

Q. So that you paid back the \$7,000 pursuant to an order of the court.

Is that correct?

A. That's correct.

Q. Has that money been fully paid?

A. Yes, it is.

Q And you were -- that would be the criminal court of the City of New York, you and Mr. Meis were both convicted on a guilty plea?

A Yes, we gave back the money.

Q The answer to my question is, you and Mr. Meisner both pleaded guilty to at various times and dates on GLG's premises, taking various quantities of steel belonging to GLG Iron Works, selling steel and receiving various amounts of U. S. currency in exchange for this steel and that you did not account for the proceeds of the sale of the steel to your employer, GLG Iron Works, and that you did not have permission or authority to take, use or possess said steel or appropriate the properties to your personal use?

A I don't -- our understanding was that Mrs. Gurian knew at the time that scrap was being sold by us, she knew about it.

She said at the end that she didn't know.

There was a lot of hard feelings between all of us, which still remains, between Mrs. Gurian and Jerry and myself, because GLG went out of business after Mr. Gurian died.

Q My question to you was that you were indicted on essentially that --

1 A Yes, we were indicted on those charges.

Q And you pleaded guilty on those?

2 A Yes, we did.

Q And you received a conditional discharge on
those charges?

A Yes, we did.

MR. EDELMAN: I'd like to have the
document, which is a certified -- they call it a
Certificate of Deposition from the Criminal Court
of the City of New York, your Honor, marked as
General Counsel's Exhibit # --

JUDGE SCHWARZBART: 13.

MR. EDELMAN: -- 13.

I guess it would be an A, B and C type
document.

JUDGE SCHWARZBART: Can you please
identifiy which is A, B and C?

MR. EDELMAN: Yes, your Honor.

A, will be Certificate of Deposition of
Mr. Erney.

(The above-mentioned was received
and marked as General Counsel's
Exhibit #13A for identification.)

MR. EDELMAN: B is Certificate of -- it's
disposition for Mr. Meisner.

(The above-mentioned was received

1 and marked as General Counsel's
2 Exhibit #13B for identification.)

3 MR. EDELMAN: And C is an affidavit of
4 police officer Henry Pascone in connection with the
5 same case, which relates to Mr. Meisner and Mr. Erney,
6 as indicated on the affidavit.

7 (The above-mentioned was received
8 and marked as General Counsel's
9 Exhibit #13C for identification.)

10 MR. EDELMAN: Now, your Honor, before I
11 move --

12 JUDGE SCHWARZBART: Has counsel had a chance
13 to see it?

14 MR. EDELMAN: I haven't had a chance to
15 move for admission.

16 Before I do, I would just like to explain
17 some things on the document, your Honor, that might
18 help.

19 JUDGE SCHWARZBART: Very well.

20 MR. EDELMAN: Under the section "Offense,"
21 is the numbers 165.40, 155.25 P. L.

22 I am informed by the clerk at the criminal
23 court that that designates the statute in McKinney's
24 wherein the defendants were indicted.

25 One is petty larceny and the other is
26 possession of stolen property.

27 Under "Disposition," are the initials P. G.
28 * * *

The Xerox copy is the admission that goes with such records.

But in any event, the witness has substantially admitted that the facts contained in the affidavit are true.

MR. PEARL: As far as the certificates of disposition are concerned, they are truly certified by the court. I have no objection to them.

Are you offering all three items in evidence?

MR. EDELMAN: I am.

MR. PEARL: I would except to the third page, the information, as being uncertified, being a Photocopy of a purported statement of a police officer.

On such basis, I would not consent to its introduction into evidence at this time, your Honor.

JUDGE SCHWARZBART: May I see the documents, please, Mr. Pearl?

MR. PEARL: Yes, your Honor.

(Handing.)

JUDGE SCHWARZBART: I'm going to receive the three documents essentially for the reasons stated by the General Counsel.

It's true that Exhibit 13-C for identification, is not certified.

286a

However, the document relates to events, the accuracies of which have been confirmed by the witness.

It would serve no valid purpose -- no valid purpose would be served by excluding it.

Accordingly, General Counsel's Exhibits 13-A, 13-B and 13-C are hereby received.

(The above-mentioned was received and marked as General Counsel's Exhibits 13-A, 13-B and 13-C into evidence.)

JUDGE SCHWARZBART: Please continue, Mr. Edelman.

MR. EDELMAN: I just have one more question, your Honor.

It refers to an earlier topic when we were talking about the assignment of work and who assigns the work.

BY MR. EDELMAN:

Q Mr. Erney, actually for all intents and purposes, during the month of September Mr. McGovern had but two employees to assign work to, and that would be Mr. Coli or Mr. Frick.

Is that correct?

A That's correct.

Q And Mr. Coli, as you have testified, was

* * *

1 MR. EDELMAN: No further questions.

2 JUDGE SCHWARZBART: I just have a couple
3 of fast questions.

4 THE WITNESS: All right.

EXAMINATION

6 BY JUDGE SCHWARZBART:

7 Q You testified with regard to the authority
8 that had been given to Mr. McGovern, that he had the--that
9 he could hire and fire.

10 A Yes, that is correct.

11 Q Has he ever hired or fired anybody?

12 A Our place is very small. He recommended
13 hiring.

14 Q My question is, has he ever hired or fired
15 anyone?

16 A He recommended hiring.

17 Q Whom did he recommend?

18 A He recommended hiring Dano Coli.

19 Q I believe that the testimony was that you
20 independently interviewed Mr. Coli.

21 A Yes, we independently did interview Mr. Coli
22 prior to -- after Mr. -- after he came in to see Tommy,
23 while the industry was on strike, and Tommy told us that
24 it would be a good idea, he thinks that it would be a
25 good idea to hire Coli when he needed him.

288a

1 He came in a couple of weeks later. He
2 said to us, "How about trying to get Dano in here to work
3 for us?" And we agreed with him, and said, "Yes, it
4 would be a good idea."

5 He is the one that suggested Dano coming to
6 the shop.

7 Q What was it that you testified that Mr.
8 Meisner does for your company?

9 A Mr. Meisner is -- he makes cutting lists.
10 He takes off plans in the office.

11 He coordinates the shop with the field to
12 make sure that we have the right steel on the field.

13 He gets calls. When he does, he would go
14 out to see what the problem would be in the field. He
15 would go out with Tommy and tell Tommy he would need this,
16 this, this, and the other thing and Tommy would tell the
17 men that he needs this and--he is a liaison, actually,
18 between the field and the shop and the office.

19 He's the liaison between the three entities.

20 Q Just that I understand how you operate and
21 work a little more clearly, you testified that you have
22 a shop area.

23 A Yes, that is correct.

24 Q And you have various employees, up to per-
25 haps three people working.

* * *

1 Q I'm trying to get a general idea.

2 I understand that the answer would have to
3 be an approximation.

4 A I would say that time spent in the shop would
5 be greater than the time spent in the field, if that's
6 what you are looking for.

7 Q On a percentage scale, what would you say,
8 approximately?

9 A I -- I don't know. I never really thought
10 about it in that vein.

11 Let's assume a typical job would take us
12 in the shop five weeks to do.

13 In the field, it's quite possible that my
14 end of the work in the field could possibly take maybe
15 two weeks in the field--

16 Q I see.

17 A --but you're talking--you're spending two
18 weeks in the field with many more men, with many more men,
19 talking about less men in the shop to fabricate, but many
20 more men in the field to install the steel.

21 Q Now, in the field, the many more men to whom
22 you're referring to, they are not persons who are employed
23 by you?

24 A No.

25 We sublet our structural steel jobs. If it's
a large job which requires a crane, we sublet our job to

1 Steel Erectors.

2 They do not fabricate.

3 Q And they do high steel work?

4 A Yes. They will rent the crane and they
5 will install the steel from the trucks that we deliver.

6 That would be on large amounts, a lot.
7 Sometimes we do it ourselves, if it's a small job, it
8 needs support of a beam or maybe support for an air con-
9 ditioning job, then we do that ourselves and Emco Steel
10 would do the installation of that material.

11 Q I see.

12 But I presume the circumstances under which
13 Emco does its own installation are the minority of the
14 circumstances?

15 A Yes, that's right.

16 It would be, as far as dollars are concerned,
17 yes. Most of the work--most of our work is given out
18 to someone else to install.

19 Q I see.

20 And the circumstances where--so that the
21 most difficult situation would be where work is given out?

22 A Yes, in the industry, yes.

23 Q So that at the job site, at the time and
24 place where the installation work is subcontracted, what
25 would your man do?

1 A My men who work for Waco Steel, you mean?

2 Q Yes.

3 A Yes. They would deliver the material, if --
4 they're, really, if it's installed by somebody else, we
5 generally do not like to get involved with it, because
6 they have the total contract on the job of installation.

7 If I sign a contract with a customer that
8 includes the installation of the job, it's my discretion
9 whether or not I want to use my own men or whether I want
10 to sublet the erection to someone else.

11 Q So that if the great majority of your time
12 as you conduct your business, at least prior to the cur-
13 rent slowdown of work--

14 A Yes.

15 Q --is it your testimony, then, that you, Mr.
16 Meisner, Mr. McGovern and the various persons in your
17 shop, are all in your building on Grand Street under one
18 roof?

19 A Most of the time, not all of the time, be-
20 cause if we were to install--if we were to install little
21 jobs, a flight of stairs, a beam, and an alteration job,
22 we would do that ourselves.

23 We would not give the erection out.

24 Q My question was extremely broad.

25 Most of the time you're all under one roof?

* * *

(Witness excused.)

1
2 MR. DELMAN: May we have just a brief
3 recess.

4 Let me just see if the witness that I called
5 for rebuttal is here.

6 JUDGE SCHWARZBART: Five minutes.

7 (Short recess taken.)

8 JUDGE SCHWARZBART: On the record.

9 MR. PEARL: I would like to call Tom
10 McGovern.
11 Whereupon,

THOMAS MCGOVERN

13 called as a witness, having been first duly sworn by
14 Judge Schwarzbart, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. PEARL:

17 Q Would you give the reporter your name?

18 A Thomas McGovern.

19 Q And where do you live, Tom?

20 A 6831 Ridge Boulevard, Brooklyn.

21 JUDGE SCHWARZBART: Brooklyn, you say?

22 THE WITNESS: Yes.

23 JUDGE SCHWARZBART: Please try to keep
24 your voice up.

25 THE WITNESS: Fine.

1 Q All right, Tom, are you employed at Emco
2 Steel?

3 A Yes.

4 Q When were you first employed there?

5 A Last year, April, or something like that.
6 I think that it was April.

7 Q All right.

8 Who hired you?

9 A Mr. Erney and Mr. Meisner.

10 Q All right.

11 Now, when you were hired, what was the ar-
12 rangement that you made with the company about your em-
13 ployment?

14 A Well, I was to be the foreman there.

15 Q All right.

16 Where were you to work, particularly?

17 A In the shop. I was there in the shop.

18 Q All right.

19 And you agreed on a salary?

20 A Yes.

21 Q What do you do on a--let's take any given
22 day. How does the day start, as far as you're concerned
23 with Emco steel, what time do you get there?

24 A Well, I go out to the place and I open up
25 the place.

1 Q You open up the place?
2 A Yes.
3 Q Do you have ~~keys~~--
4 A Yes.
5 Q --to the place?
6 A Yes.
7 Q Okay.
8 At the end of the day do you close the place?
9 A Yes.
10 Q Now, what do you actually do in the shop
11 when there is a job in there?
12 What is your function?
13 A Well, as an ironworker I'm an all around
14 man. I do anything--anything to be done, I do, and if
15 there is anybody else, they work with me.
16 Q They work along with you?
17 A Yes.
18 Q Did--did you ever hire anyone or fire anyone?
19 A No.
20 Q Could you hire--
21 MR. EDELMAN: Objection.
22 JUDGE SCHWARZBART: Sustained.
23 The fact is that you have developed it in
24 a conversational form with respect to the witness' author-
25 ity or lack thereof, but not in a conclusionary form.

295a

1 MR. PEARL: All right.

2 Q Did you discuss with Mr. Erney your author-
3 ity with regard to employees at Emco, or with Jerry?

4 A Yes.

5 Well, they just told me, well, you run the
6 shop, when they are both out, and that was my job. And
7 when they were there, they work with me.

8 JUDGE SCHWARZBART: Well, when was this
9 conversation, the one in which they told you that they
10 wanted you to run the shop?

11 THE WITNESS: When they hired me, they
12 told me that they wanted me to run the shop for them.

13 Q And as part of the function, do you check
14 on work being done?

15 MR. EDELMAN: Objection.

16 I'm objecting to leading questions, Your
17 Honor.

18 Ask him what he does.

19 JUDGE SCHWARZBART: Sustained.

20 Q What do you do regarding the work in the
21 shop and the other employees? What is the nature of
22 what you do?

23 A I do -- we work on a job. It's got to go
24 through me before it goes out. I have to see that it's
25 done right.

1 Q You have to see that it's done right?

2 A Yes.

3 Q And what if it's not done right, what do you
4 do?

5 A I fix it.

6 Q Do you tell the employees anything about
7 the work?

8 A Yes. I give them their jobs. I give--
9 I mean, if Meisner comes in, he's the boss, but he asks
10 me what he can do and I tell him about the work and he
11 would say to me, "So give them the job."

12 And I tell them what to do, what I want done.

13 Q And this is every day of the week, all of
14 the time?

15 A When he comes in, when he comes to me and
16 asks me what he could do.

17 Q Is part of your authority concerned with
18 the working conditions of the other people?

19 A Not really, no. No, I would not say so.

20 Q What about lunchtime?

21 A Yes. I would tell them when to knock off
22 for lunch; usually the same time.

23 Sometimes if a truck comes in, we will un-
24 load the truck and stop later for lunch.

25 Q Is there a bell that rings in the place that

1 signals the end of the day?

2 A No.

3 Q How does everyone know when it's time to
4 leave?

5 A Well, I have a radio and I have a clock and
6 I say that the day is over.

7 Q If someone was not doing a good job and he
8 was--would be entitled to a raise, would the worker speak
9 to you about it?

10 MR. EDELMAN: Objection.

11 JUDGE SCHWARZBART: Sustained.

12 MR. EDELMAN: Leading.

13 JUDGE SCHWARZBART: Sustained.

14 Q Do you--strike that.

15 Tom, did a man by the name of Dano Coli work
16 in the shop at any time last year?

17 A Yes.

18 Q Did you speak him when he came to work there?

19 A Yes.

20 Q Was that when he first started working?

21 A Yes.

22 Q What did you say to him and what did he say
23 to you?

24 A Well, in reference to his employment now?

25 Q Yes.

1 A Well, he was--he was employed by a firm
2 that was on strike, so he come to work for us while they
3 were on strike, and he was waiting, you know, like until
4 the strike was over.

5 JUDGE SCHWARZBART: Look, this is very
6 conclusionary.

7 Mr. Edelman asked before that the witnesses
8 only testify as to what they said, what they heard, and
9 so on, and there are conversational methods of developing
10 such evidence.

11 MR. PEARL: All right.

12 JUDGE SCHWARZBART: We have been here for
13 several days already, and I don't think that anyone can--
14 I don't believe that anyone would begrudge the additional
15 time that it would take to do it right.

16 MR. PEARL: Yes.

17 BY MR. PEARL:

18 Q He had a conversation with you, Dano Coli,
19 when he started working there, you talked to him?

20 A Yes.

21 Q ... did?

22 A Yes.

23 Q And what did he tell you--what did he say
24 to you about his employment at Emco?

25 A Well, I couldn't remember exact words.

1 Q Did he tell you where he worked before?

2 A He worked in Brighton Steel. He had a job
3 there and his intention was that he would return there
4 when the strike was over.

5 Q Did he tell you that?

6 A Yes.

7 Q What did Dano Coli do at Emco Steel while
8 he was there?

9 A He was mostly welding, but as an ironworker
10 he did other things, too, but mostly iron welding.

11 Q Well, who watched over his work?

12 A Well, I would give him the work. I've
13 known Dano a long time. You have to watch his work.
14 He knows his work.

15 Q And there came a time when Dano left Emco
16 Steel?

17 A Yes, he was laid off.

18 Q Did you lay him off?

19 A No.

20 Q Did you tell him that there was no more
21 work or did someone else tell him that?

22 A Well, the bosses would tell him that.

23 Q Is -- was part of the work there fabricating
24 steel?

25 A Yes.

1 A Okay.

2 And sometimes the work was done outside the

3 plant?

4 A Yes, it was, yes.

5 Q All right.

6 A Yes.

7 Q Was that part of your job, to help erect the

8 steel in work when it was outside the plant?

9 A It seldom happened, but occasionally it did

10 happen.

11 Q When it did happen?

12 A Yes, I would go sometimes.

13 Q Did you work with other people or did you

14 do it yourself?

15 A Both. I would go out with other people and

16 I have been out by myself, too.

17 Q How would you get out to those places?

18 A Take the truck.

19 Q Company truck or your own?

20 A Company truck.

21 Q Were you the only one that would drive the

22 company truck?

23 A Yes.

24 Q Did the other employees ever drive the company

25 truck?

1 A None of the other employees, no.

2 Q Going back to last year in September some-
3 time, do you recall meeting Tony Schifano?

4 A Yes.

5 Q Did he call you up and ask to meet with you?

6 A Yes.

7 Q Did he ask you to sign a card for Local 455?

8 A Yes.

9 Q Did you sign the card?

10 A No.

11 Q You didn't?

12 A No.

13 Q Did you ever sign the card with Local 455
14 after that day--

15 A No.

16 Q --that he asked you?

17 A No.

18 Q Is -- were you served with a subpoena by
19 Mr. Edelman's office to come down here today?

20 MR. EDELMAN: Objection.

21 JUDGE SCHWARZBART: Off the record.

22 (Discussion off the record.)

23 JUDGE SCHWARZBART: Back on the record.

24 I was going to ask you why you consider it
25 relevant.

1 MR. PEARL: I consider it relevant because
2 this is a witness who, apparently, received a subpoena
3 from the Board, received numerous phone calls from the
4 Board agent, Mr. Edelman, who was inquisitive and was
5 asking him many questions, and last night at nine o'clock
6 he was advised that he was no longer needed as a witness.

7 JUDGE SCHWARZBART: I'll sustain the ob-
8 jection.

9 BY MR. PEARL:

10 Q Did you have an occasion to have a telephone
11 conversation with Mr. Edelman during last week?

12 A Yes.

13 Q Did he call your house and speak--

14 MR. EDELMAN: I am going to object unless
15 relevancy is shown.

16 This relates to the investigation of a case
17 or preparation for trial, and how General Counsel pre-
18 pares and conducts its trials, and why it decides to
19 call witnesses or decides why not to call witnesses is
20 irrelevant to this case.

21 JUDGE SCHWARZBART: Is this in line with
22 the subpoena ruling that I made but a moment ago?

23 MR. PEARL: Yes. Except it relates solely
24 to--

25 JUDGE SCHWARZBART: Let me ask you, in

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1 JUDGE SCHWARZBART: I see.

2 MR. PEARL: I have no further questions
3 at this time.

4 JUDGE SCHWARZBART: Mr. Edelman?

5 MR. EDELMAN: I have a couple.

CROSS-EXAMINATION

7 BY MR. EDELMAN:

8 Q Mr. McGovern, how long have you been in-
9 volved in the structural steel end of the business?

10 A Thirty years.

11 Q I take it you would consider yourself a
12 fairly experienced employee in this end of the business?

13 A Yes.

14 Q Is that correct?

15 A Yes.

16 Q Now, how long has Mr. Coli been in the
17 structural steel end of the business, if you know?

18 A About the same time, I would say.

19 Q Have you known Mr. Coli over the years?

20 A Yes.

21 Q Have you worked on jobs together?

22 A Yes.

23 Q And you knew the quality of his work?

24 A Yes.

25 Q Was he a good worker?

304a

1 A Yes.

2 Q As a matter of fact, you were both members
3 of Local 455?

4 A Yes.

5 Q Is that correct?

6 A Yes.

7 Q And you are still a member of 455?

8 Is that correct?

9 A Yes.

10 Q And have always been a member in good
11 standing?

12 A Yes.

13 Q Would you consider Mr. Coli to be of equal
14 experience as yourself in the business?

15 MR. PEARL: I object.

16 He's asking for an opinion beyond the lati-
17 tude of this witness' ability to answer.

18 JUDGE SCHWARZBART: Well, the witness does
19 have a measure of expertise in the field based upon thirty
20 years of experience.

21 I'm not really certain that this is really
22 of great relevance to the proceeding.

23 MR. EDELMAN: All right, I'll withdraw the
24 question.

25 Q Now, you didn't hire Mr. Coli? Is that

305a

1 correct?

2 A That is correct.

3 Q Nor did you decide to lay him off?

4 Is that correct?

5 A That is correct.

6 Q And you didn't hire Mr. Frick?

7 Is that correct?

8 A Yes.

9 Q Nor did you decide to lay off Mr. Frick when
10 he was layed off?

11 A Yes, that is correct.

12 Q As a matter of fact, you didn't hire anybody
13 during your period of employment with Emco?

14 A Yes, that is correct.

15 Q Nor fire anybody?

16 A Yes.

17 Q That's true, you didn't fire anybody?

18 A Yes, that is correct.

19 Q Nor to lay anybody off?

20 Is that correct?

21 A Yes, that is correct.

22 Q Now, is it true that most of your--your
23 time was spent in the shop area during the day?

24 A Oh, yes, all of my time.

25 Q Virtually all of your time?

306a

1 A Yes.

2 Q Would the same be true generally of Mr.
3 Coli when he was there and Mr. Frick when he was employed?

4 A Yes.

5 Q And would it also be true, generally
6 speaking, when Mr. Meisner was present or Mr. Erney was
7 present?

8 A No. Half of--perhaps part of the time.

9 Q At least part of the time?

10 A Yes.

11 Q Now, with respect to -- to distributing
12 work, I take it that you got the work that had to go out
13 at the beginning of the day?

14 A Yes.

15 Q And referring now to the time that Mr.
16 Frick and Mr. Coli were employed and only that time--

17 A Yes.

18 Q --well, before I got into that, when Mr.
19 Frick was hired, would you consider him to be an exper-
20 ienced man in the structural steel end of the business?

21 A No.

22 Q Now, during Mr. Frick's employ there, let's
23 say as of September, would you consider Mr. Frick to be
24 what you would consider to be experienced in the steel
25 business, in the structural steel end of the business?

1 A He was a young fellow, young.

2 Q Now, I take it that there would be some
3 jobs, for example, that you would have to do that would
4 require a great deal of skill?

5 A Yes.

6 Q And there were other jobs, I take it, that
7 would be considered routine, that anyone could perform?
8 Is that correct?

9 A Yes.

10 Q In connection with a job that would require
11 a great deal of skill, and now I direct your attention
12 to the time that when Coli and Frick were working together
13 with you --

14 A Yes.

15 Q --how would you go about deciding as to
16 who would do the difficult job and who would do the easy
17 job?

18 A Well, like I'm a long time there, I know
19 exactly what each can do and what each can't do.

20 Q So, in other words, you're saying that any
21 difficult job you would give to Coli and any easy job you
22 would give to Frick?

23 MR. PEARL: Objection.

24 I think that he's putting words into the
25 witness' mouth.

1 JUDGE SCHWARZBART: Overruled.

2 Q Would it be fair to say, Mr. McGovern--

3 JUDGE SCHWARZBART: Rephrase the question.

4 MR. EDELMAN: Yes, I'll rephrase it.

5 Q Would it be fair to say, Mr. McGovern,
6 that if a job involved a great deal of difficulty, that
7 you would invariably assign it to Mr. Coli?

8 A Well, there are a lot of different types of
9 jobs.

10 Q If it was between Mr. Coli or Mr. Frick,
11 whom would you give it to?

12 A Well, naturally, Coli; he has much more
13 experience.

14 He would probably be able to do it better.

15 Q And there were jobs, of course, that you
16 knew that Mr. Coli could not do?

17 A Yes.

18 Q And then you would do them yourself?

19 A Yes, or that jobs that would take strength
20 then the kid would do them.

21 Q I see.

22 Now, there came a time when you signed an
23 authorization card for Local 810, is that correct?

24 A Yes.

25 Q Do you recall on or about when you signed

1 this card for Local 810?

2 MR. PEARL: Objection.

3 Your Honor, I have an objection to the line
4 of questioning.

5 I don't feel that it was raised by myself
6 in any testimony of Mr. McGovern and that it's not proper
7 subject of cross-examination.

8 JUDGE SCHWARZBART: Well, under the rules,
9 the counsel for the General Counsel can, with any party,
10 exceed the scope of direct.

11 MR. PEARL: There is discretion, of course,
12 with yourself, on that point and I'm addressing myself
13 to that.

14 JUDGE SCHWARZBART: However, as you exceed
15 the scope of direct, the witness becomes your own.

16 MR. EDELMAN: Correct.

17 Would the reporter please read back the
18 last question?

19 (The reporter read the question.)

20 A I remember signing it, but just--just the
21 month or the day. I can't recall right now.

22 I think that it was September or something.

23 Q All right.

24 Now, do you recall having a conversation
25 with Mr. Schifano in connection with signing a card for

1 Local 455?

2 A Yes.

3 Q Now, did you have this -- did you sign the
4 810 card after your conversation with Mr. Schifano, do
5 you know, or before?

6 A After.

7 Q Was it shortly after or long after, do you
8 know?

9 JUDGE SCHWARZBART: In terms of weeks, per-
10 haps?

11 A Well, probably about a month, I would say.

12 Q Do you recall also signing an 810 code
13 card?

14 A Yes.

15 Q All right.

16 Now, I want to focus your attention on your
17 signing of the Local 810 cards.

18 A Yes.

19 Q Can you describe for me in as much detail
20 as you can recall just--well, where were you, first of
21 all? Where were you when you signed the card?

22 A I was in the shop. The guys came to me,
23 two organizers, and they told me that they had the major-
24 ity of the men signed up.

25 Q Do you recall their names?

1 A I think that there was a Grant, and a Preusse
2 or something. Their names--the names of the organizers?

3 Q Yes.

4 A Oh, the organizers, one was Silverman; the
5 other guy, I don't remember his ~~name~~.

6 Q All right.

7 Where did you sign the card itself?

8 A I think that it was in the shop. I can't
9 be sure because I spoke to them also in the office.

10 Q Spoke to whom in the office?

11 A Silverman and the other organizer.

12 I spoke to them in both places.

13 Q And you can't be sure? I don't want you
14 to give any testimony that you're not sure of.

15 A I don't remember exactly where, but I re-
16 member talking to them both places.

17 Q All right.

 Now, in connection with the time that you
were in your office with them, who was present/

 A Well, I was, Frick, and these two guys.

 We were in the back of the office. I think
that Mike was there and a salesman or somebody.

 I don't recall who else was there.

 Q Do you recall Mr. Erney being present?

 A I don't think that he was there at that time,

1 but again, I cannot be perfectly sure about that.

2 Q Fair enough.

3 Now, do you recall what the conversation
4 was at that time in the office?

5 A You mean what the conversation with the
6 organizers was?

7 Q Yes.

8 A Well, there was really not that much of a
9 conversation. They showed me cards, Frick and I, and said
10 that they had--they had four names, or something, and so
11 that was the majority, and it gave them the right to be
12 the bargaining agents, so since it was organized I signed
13 the card, too, because I wanted to remain there.

14 Q Well, did -- how did you happen to get the
15 card?

16 A They gave it to me.

17 Q And when they gave you the card did they
18 say anything about the card?

19 A They explained to me that they had--they
20 had the majority of the workers and this was an 810 card
21 and if I signed up I would be a member of 810.

22 Q All right.

23 Now, in connection with ending the day,
24 you say that there is no time clock?

25 A Yes, that is correct.

1 Q And you--you take the work each morning,
2 I take it, from Mr. Maisner, is that correct?

3 In other words, at the beginning of the
4 morning you know what work there is for the day?

5 A Not really. When Mr. Maisner gives me
6 prints, that may be a month's work or a week's work.

7 Q I see.

8 A You know, not every day; he doesn't give it
9 to me every day.

10 MR. EDELMAN: I have no further questions,
11 Your Honor.

12 EXAMINATION

13 BY JUDGE SCHWARZBART:

14 Q I would just like to go back to that time
15 which, I believe, took place around mid-October when you
16 signed the card for Local 810.

17 Does that sound about right to you?

18 A Yes, Your Honor.

19 Q Mid-October, 1975?

20 A Yes.

21 Q Now, you testified in response to Mr. Edel-
22 man's questions that you discussed the card with the or-
23 ganizers in two places--

24 A Yes.

25 Q --in the shop and in the office.

1 A Yes, that is correct.

2 Q Could you pull it together for us so that
3 we could see what the sequence of events were, how you
4 happened to get to the office from shop and so on? Was
5 that all the same day?

6 A It's joined, practically.

7 The back door of the office goes into the
8 shop.

9 Q Yes?

10 A So these people came up, they come up and
11 approach me and they spoke, told me about the contract.

12 I knew also that there was unions--unions
13 were involved, so they spoke, and he said -- there is a
14 small place in the office that the workers use, and they
15 showed me the sick benefits and the pension funds and it
16 was explained to me, and they gave us the card and we
17 signed. But whether we signed them in the shop or in
18 the office, I don't remember, because when he started
19 talking, he started talking in the shop.

20 Q I see.

21 And where were you when you signed the card?

22 A That I don't remember. I don't remember
23 whether I was in the shop or in the office, but it was
24 at the same time.

25 Q Let me ask you. What were the hours of

315a

1 operation of the shop?

2 A Normally, it's 7:30 until 4:00 o'clock.

3 Q And around what time of day did the organ-
4 izers approach you?

5 A It was during the working time, I think
6 about ten o'clock in the morning, I think; something like
7 that.

8 Q Were you on a break at the time?

9 A No.

10 Q Was anybody else on a break?

11 A I don't remember.

12 Q Did you see these organizers in the shop
13 before they came to speak to you?

14 A No.

15 Q When they approached you, was anybody else
16 there?

17 A Frick.

18 Q Okay. He came over with them?

19 A No, he was with me.

20 Q He was with you--

21 A Yes.

22 Q --at the time?

23 A Yes, and the organizers came to us.

24 Q I see.

25 And were you together throughout?

1 A Yes.

2 Q Okay.

3 Now, you testified that when you went into
4 the office Mr. Meisner was there in the same room.

5 A At the -- you know, like at the front of
6 the room it was a different part.

7 We were in the back; he was in the front of
8 the room, yes.

9 Q But it's one room?

10 A Yes, a big room, yes.

11 It's like a hallway and an office in front.
12 We were in the hallway.

13 Q I see.

14 JUDGE SCHWARZBART: Mr. Pearl?

15 MR. PEARL: One moment, please, Your Honor.

16 JUDGE SCHWARZBART: One more question be-
17 fore you start.

18 BY MR. SCHWARZBART:

19 Q After--did you see the organizers do anything
20 or go anyplace after you completed your conversation with
21 them?

22 A Go -- no, I didn't see them -- they left,
23 you know, they went away.

24 Q Do you know where they went?

25 Did you see where they went?

1 A No.

2 JUDGE SCHWARZBART: All right, Mr. Pearl.

3 REDIRECT EXAMINATION

4 BY MR. PEARL:

5 Q Tom, you said before that you didn't hire
6 or fire anyone--

7 A Yes.

8 Q --up to now.

9 A Yes.

10 Q Do you have authority to do that if the
11 event came up?

12 MR. EDELMAN: Objection.

13 JUDGE SCHWARZBART: Sustained.

14 You could explore with the witness the basis
15 for any understanding that he has concerning any author-
16 ity that he might have.

17 Q When you started working there and you
18 spoke to Mr. Erney--

19 A Yes.

20 Q --and you had a conversation--

21 A Yes.

22 Q --regarding what you would do there--

23 A Yes.

24 Q --what was--what were the items that you
25 discussed with Mr. Erney?

GENERAL COUNSEL'S EXHIBITS

EXHIBIT 3 - COLLECTIVE BARGAINING AGREEMENT 318a
BETWEEN EMCO STEEL, INC. AND LOCAL 810, I.B.T. U. (pp. 318a-327a)
AGREEMENT MADE AND ENTERED INTO on the 14th day of
October, 1975, by and between EMCO STEEL INC., 961 Grand Street,
Brooklyn, N.Y. 11211, hereinafter referred to as the "EM-
PLOYER" and LOCAL 810, STEEL, METALS, ALLOYS AND HARDWARE
FABRICATORS AND WAREHOUSEMEN, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, 10 East 15th Street, New York, New York, its succe-
sors or assigns, hereinafter referred to as the "UNION".

W I T N E S S E T H :

In consideration of the mutual promises herein contained,
the parties hereto agree as follows:

I BARGAINING UNIT

The following shall be the appropriate bargaining unit:
All employees, exclusive of office clericals, non-working super-
visors, watchmen, guards and supervisors as defined in the
National Labor Relations Act as amended.

II RECOGNITION

The Employer recognizes the Union as the sole and exclusive
collective bargaining agent for all the employees described in
the bargaining unit with regard to wages, hours and other con-
ditions of employment.

III UNION SECURITY

It shall be a condition of employment that all employees of
the Employer covered by this Agreement who are members of the
Union in good standing on the execution date of this Agreement
shall remain members in good standing, and those who are not mem-
bers on the execution date of this Agreement shall, on or after
the 30th day following the execution date of this Agreement, be-
come and remain members in good standing in the Union. It shall
also be a condition of employment that all employees covered by
this Agreement and hired on or after the execution date shall,
on or after the 30th day following the beginning of such employ-
ment, become and remain members in good standing in the Union.

IV HIRING HALL

The Employer will notify the Union by telephone, confirmed
by letter to be mailed on the same day, of all requirements for
new help. The Union agrees to furnish applicants, whenever pos-
sible, through its hiring hall at its offices at 10 East 15th
Street, New York, New York. The Employer retains the right to
reject any job applicant referred by the Union. This provision
is not to be deemed or interpreted to be a requirement for a
closed shop as the hiring hall maintained by the Union as afore-
said is available to both Union and non-Union applicants for jobs
and selection of applicants for referral to jobs is on a non-dis-
criminatory basis and not based upon, or in any way affected by,
Union membership, By-Laws, regulations, constitutional provisions
or any other aspect or obligation of Union membership, policies
or requirements. In the event the union is unable to supply satisfac-
tory help within twenty four hours after notification, exclusive of
non-working days, the Employer may hire in the open market.

All newly hired help shall obtain referral cards from the Union
which cards shall be issued without regard to membership or
non-membership in the Union and are issued only for the purpose
of appropriate record keeping and bookkeeping by the Union.

BEST COPY AVAILABLE

(a)
24

V

CHECKOFF

The Employer agrees that during the full term of this Agreement, and any extension or renewal thereof, it will deduct in the first week in every month from the earnings of employees who have so authorized, in writing, and in accordance with the provisions of said authorization, membership dues (which term includes initiation fees) and remit the same to the Union. The remittance shall be accompanied by a list showing individual names and amounts deducted. The total remittances are to be made not later than the fifteenth (15th) day of the same month. The Union shall advise the Employer of the amount of initiation fees and dues and the manner in which the same shall be deducted.

VI

HOURS AND OVERTIME

The work week shall be from Monday to Friday, inclusive, and shall consist of eight (8) hours in each day. The workday shall commence not earlier than 6:00 A.M. Time and one-half shall be paid for all hours worked in excess of eight (8) hours in any one day, or after forty (40) hours in any one week, or for any hours worked prior to 6:00 A.M. or on Saturday. Double time shall be paid for work performed on Sunday. When work is performed on any holiday designated as such herein, time and a half in addition to payment for such holiday shall be paid. Overtime work shall be offered in accordance with seniority in the respective classifications, but no employee shall be compelled to accept overtime work.

VII

SECOND AND THIRD SHIFTS

Employees working on a second or night shift shall be paid ten percent (10%) above their regular rate of pay. Employees working on the third shift shall be paid fifteen (15%) percent above their regular rate of pay.

VIII

CALL IN AND REPORT PAY

Every worker who reports for work unless he is otherwise previously notified, is guaranteed a minimum of four (4) hours of available work or pay. If a worker reports for work on Saturday, he shall be guaranteed four (4) hours available work or pay at time and one-half rate. This provision does not relieve the Employer of the notice of layoff provided for herein. This provision is inoperative if work is unavailable because of an Act of God, provided the Employer had no opportunity to notify the employees.

IX

HOLIDAYS

The following shall be holidays for which every employee shall receive eight (8) hours regular straight-time rates without performing any work:

New Year's Day	Labor Day
Good Friday	Election Day
Washington's Birthday	Thanksgiving Day
Memorial Day	Christmas Day
Independence Day	

If any of the named holidays falls on a Saturday, each employee shall receive his regular eight (8) hours straight-time rate. If any of such holidays falls on a Sunday, the holiday shall be observed on the following Monday.

Any employee who has been absent for any reason or laid off within two (2) weeks prior to any of the above named holidays shall, nevertheless, receive payment therefor. Probationary employees shall receive payment for holidays. 320a

X SENIORITY

Employees employed for less than thirty (30) calendar days are probationary employees. A probationary employee may be terminated from the payroll without recourse.

Employees employed for a period of thirty (30) calendar days shall attain seniority rights, measured from the first day of employment for the purposes of layoffs and rehiring, shop-wide seniority, with the ability to do the available work, shall prevail. If a higher-rated job or a promotion becomes available, an employee with a seniority shall be entitled to such job, if he has the ability to do the work, over an employee with less seniority or over a new employee. Seniority shall terminate in the following cases:

1. Absence from work for five (5) consecutive days without notifying the Company of the reasons for such absence, unless the failure to notify is excusable.
2. Failure to report for work and return to work when laid-off, within five (5) work days after being notified by certified mail or telegram requesting him or her to do so. Any employee who is laid off shall keep the Company advised, in writing, of his or her current address, and the Company shall notify such employee by certified mail or telegram addressed to such address, when an opening is available for him or her in line with his or her seniority status. Such notice shall specify the date and hour to report for work. A copy of such notice shall be given to the union and Shop Steward within twenty-four (24) hours after same is mailed or sent. Upon receipt of such written notice or telegram, the employee will notify the Company whether or not he or she will report for work at the time requested.
3. Discharge for proper cause.
4. If he or she resigns or quits.
5. When an employee has been laid-off for a period of time equivalent to his length of service with the Company up to but not greater than twelve (12) months.

XI LAYOFF

A layoff shall not be effective against employees employed for over three (3) calendar months unless one (1) working day advance notice, in writing, thereof is given to the employee or employees affected and copies of such notice delivered to the shop steward and the union.

XII DISCHARGE

Employees can be discharged only for just and proper cause. Before any employee is discharged, the Employer must give one (1) working day's notice, in writing, to the Union, stating the reason for and the date of the proposed discharge, to enable the Union to intercede in behalf of such employee. In cases involving theft or malicious mischief or drunkenness an employee may be discharged without prior notice but the Union shall be immediately notified of all the facts by the Employer.

This clause is not a modification or waiver of any rights which the Union or the discharged employee has under the arbitration provisions of this Agreement.

XIII

VISITATION

321a

A representative of the Union shall be permitted to enter the premises of the Employer upon notification to said Employer, at any time during working hours, to carry out the terms of this Agreement and to ascertain whether the terms hereof are being complied with.

XIV

PAYROLL RECORDS

The Employer will keep a set of payroll records which may be examined by the Union during business hours.

XV

PROTECTION OF RIGHTS

It shall not be a violation of this Agreement and it shall not be cause for discharge or disciplinary action, in the event an employee refuses to enter upon any property involved in a primary labor dispute, or refuses to go through or work behind any primary picket line, including the primary picket line of Unions party to this Agreement and including primary picket lines at the place or places of business of the Employer.

XVI

ARBITRATION

Any controversy, claim, dispute or grievance between the Employer and the Union, growing out of the interpretation or application of this Agreement or of any breach or threatened breach of this Agreement shall be submitted to Herman A. Brickman, as arbitrator. The arbitrator's award shall be final and binding and enforceable in any court of competent jurisdiction. Expenses of arbitration shall be borne equally by the disputing parties.

XVII

LEAVE OF ABSENCE

Employees are entitled to leaves of absence not exceeding one (1) year for good cause. Such leaves of absence shall be paid for, but not confined to restoration of health, medical, dental or other treatment, maternity leave, or employment by the Employer and shall not prejudice seniority status.

XVIII

BULLETIN BOARDS

The Employer shall provide bulletin boards for the exclusive use by the Union.

XIX

SHOP STEWARD

The Employer recognizes the right of the Union to designate a Shop Steward whose authority shall be limited to, and shall not exceed, the following duties and activities:

- 1 - The investigation and presentation of grievance in accordance with the provisions of the collective bargaining agreement
- 2 - The transmission of such messages and information which originate with, and are authorized by, the local Union or its officers, provided such messages and information:
 - (a) have been reduced to writing, or
 - (b) if not reduced to writing, are of a routine nature and do not involve work stoppages, slowdowns, refusal to handle goods, or any other interference with his Employer's business, or the business of any member of the Employer.

The Shop Steward shall be entitled to top seniority in the plant. The Shop Steward shall during regular working hours be permitted to investigate, present and process grievances on the property of the Employer without loss of time or pay. Such time spent in handling grievances shall be considered working hours in computing daily and/or weekly overtime.

X
10/

XX

TELEPHONE

322a

A telephone shall be made available to the Shop Steward for the purpose of communicating with the Union.

XXI REST PERIODS

Employees shall receive one ten minute rest periods before lunch without loss of pay.

XXII HEALTH AND WELFARE

The Employer agrees to pay seven (7%) percent of the gross wages of each of the employees, regular and probationary, covered by this Agreement, said gross wages to include overtime, incentive and bonuses of any kind and nature, to the United Wire, Metal and Machine Health and Welfare Fund. However in computation of gross pay no individual weekly pay in excess of \$225.00 shall be included.

Payments are to be made monthly and to be accompanied by a written list showing the name of the employee, his shop number or classification, his weekly wages and the amount of contribution. Contributions to the Fund shall be held, managed and administered in accordance with the current Trust Indenture, or as amended hereafter, of the said United Wire, Metal and Machine Health and Welfare Fund, the terms of which the Employer hereby ratifies. The Employer agrees to furnish to the Fund all records pertaining to the names of employees, social security numbers, amount of wages paid, number of hours worked, family status, new employees hired, employees whose services are terminated, and such other information as may be required by any underwriting insurance company or by the Fund for the proper administration thereof. The payroll and other pertinent records of the Employer may be examined by the Union or the Fund, or their representatives, at reasonable hours, on demand.

It is expressly understood and agreed that the contributions to the United Wire, Metal and Machine Health and Welfare Fund as herein provided shall not obligate the said Fund to provide the coverage required by the New York State Disability Benefits Law. The said required benefits shall be provided independently by the Employer without any deductions from, or contributions by, the employees.

It is expressly agreed that the Union and/or the United Wire, Metal and Machine Pension Fund shall have the right to cover its or their employees in the United Wire, Metal and Machine Health and Welfare Fund, provided that the Union and/or the United Wire, Metal and Machine Pension Fund shall make contributions to the said Fund, but neither the Union nor the United Wire, Metal and Machine Pension Fund shall participate in the selection of Employer-Trustees of the United Wire, Metal and Machine Health and Welfare Fund may provide coverage for its own employees.

XXIII PENSION

The Employer agrees to contribute on or before the tenth day of each month to the United Wire, Metal and Machine Pension Fund the sum of five (\$5.00) dollars per week for each employee on the payroll, regular and probationary, covered by this Agreement. Effective October 4th 1976, the Employer agrees to contribute six (\$6.00) dollars per week for each employee as aforesaid. Effective October 14th, 1977, the Employer agrees to contribute seven (\$7.00) dollars per week for each employee as aforesaid.

The contributions to the Fund shall be held, managed and administered in accordance with the current Trust Indenture, or as amended hereafter, of the said United Wire, Metal and Machine Pension Fund, the terms of which the Employer hereby ratifies. The Employer will furnish to the Fund all records pertaining to the employees which may be required by the Fund for the proper administration thereof, and the payroll and other pertinent records may be examined by the Union or the Fund, or their representatives, at reasonable hours, on demand.

It is expressly agreed that the Union and/or the United Wire, Metal and Machine Health and Welfare Fund shall have the right to cover its or their employees in the United Wire, Metal and Machine Pension Fund, provided that the Union and/or the United Wire, Metal and Machine Health and Welfare Fund shall make contributions to the said Fund, but neither the Union nor the United Wire, Metal and Machine Health and Welfare Fund shall participate in the selection of Employer-Trustees of the United Wire, Metal and Machine Pension Fund. The United Wire, Metal and Machine Pension Fund may provide coverage for its own employees.

XXIV ENFORCEMENT OF WELFARE AND PENSION CONTRIBUTIONS

In the event the Employer defaults in the payment of the contributions to either the United Wire, Metal and Machine Health and Welfare Fund or the United Wire, Metal and Machine Pension Fund, or both, enforcement may be had by either the Union or the Trustees of the respective Fund, in which event the Employer shall pay, in addition to the amount due, reimbursement for all costs and expenses incurred by the Union or the Trustees of the Fund, in arbitration suit or enforcement thereof, including reasonable counsel fees, accountant's or auditor's fees and disbursements.

In the event the Employer defaults in the payment of the contributions herein provided to be made to the United Wire, Metal and Machine Health and Welfare Fund or the United Wire, Metal and Machine Pension Fund, or both, the Union may authorize a work stoppage.

Notwithstanding any other provision of this Agreement relating to arbitration, the parties specifically agree that any claim made by the Union for failure by the Employer to pay contributions to the United Wire, Metal and Machine Health and Welfare Fund or to the United Wire, Metal and Machine Pension Fund, or for failure to pay initiation fees and/or dues to the Union, or all of them, may be submitted by the said Welfare or Pension Funds, or by the Union, upon three (3) days' notice by mail, to the Impartial Chairman of the United Wire, Metal and Machine Health and Welfare Fund, as Arbitrator, under such rules and regulations as he deems appropriate, and his award shall be final and binding and enforceable in any court of competent jurisdiction.

XXV SICK LEAVE

Employees employed for six (6) months or more shall receive five (5) days sick leave with pay each contract year. Any sick leave unused shall be added to the employees' vacation periods or be compensated for at their regular rates.

XXVI ARMED FORCES SERVICE

324a

An employee entering the Armed Forces who has been employed for a period of one (1) year shall receive one (1) week's pay; and if he has been employed for three (3) years, he shall receive two (2) weeks' pay. Upon termination of such service, if able to perform the work, he shall be restored to his (or her) former job, or to a job substantially similar, without loss of seniority or other rights. Such employee shall receive all wage increases and other benefits granted during his absence.

XXVII MOURNING PERIOD

Each employee shall be entitled to three (3) days mourning period with full pay in the event of a death in his immediate family. Immediate family shall consist of spouse, children, father, mother, brother or sister.

XXVIII VACATIONS

Paid vacations shall be given to employees in accordance with the following schedule:

After 1 year of service-----one (1) week
After 3 years of service-----two (2) weeks
After 8 years of service-----three (3) weeks
After 15 years of service-----four (4) weeks

All vacations should be taken between the months of June and September. However an employee who is eligible to receive four (4) weeks vacation may take the fourth week off at such time during the contract year as is mutually agreed to by the Employer and the employee in question.

An employee shall receive an extra day vacation, or be paid an extra day's pay, for a paid holiday which falls within his vacation period.

If an employee is laid off, terminates his employment or his employment is terminated for any reason, he shall receive pro-rated vacation pay at the time of his layoff or termination.

The Employer shall post a vacation schedule thirty (30) days in advance of vacations.

XXX EMPLOYEE INJURY

An employee injured during working hours shall receive the rest of the day off without loss of pay, provided that the injuries are such that a doctor orders the employee not to return to work.

XXXI ASSIGNMENT OF CONTRACT

The parties agree that this Contract may be assigned by the Union to a successor Union, and such assignment shall be binding upon the Employer immediately upon the mailing of notice by registered or certified mail to that effect, in which event the successor Union shall be the beneficiary of all the terms, conditions and covenants hereof.

The Employer agrees that this Contract and any assignment thereof shall be binding upon its successors and assigns, regardless of the name or entity under which such successors and assigns may conduct business.

XXXII

INCREASED COST OF TRANSPORTATION

If the Employer moves and such removal is made to a location which requires any employee to expend an amount greater than he now pays for transportation, such member will pay the increased cost thereof weekly.

XXXIII

DISCONTINUANCE OF EMPLOYER TRUCKING

If the Employer discontinues, sells or otherwise ceases to operate its own trucks, it shall not hire, utilize or otherwise lease outside trucking facilities unless the drivers covered by this Agreement are placed on such hired or leased trucks as employees of such member and continue their employment pursuant to the terms and conditions of this Contract.

XXXIV

WAGE INCREASES AND CLASSIFICATIONS

Effective October, 1975, all employees shall receive a general increase of twenty-five (\$.25) cents per hour. Effective October, 1976, all employees then employed shall receive a general increase of twenty-five (\$.25) cents per hour. Effective October, 1977, all employees then employed shall receive a general increase of twenty-five (\$.25) cents per hour.

Simultaneously with the granting of the general increases provided for herein, all rates shall be increased by the general increases.

Minimum wage rates are as follows:

		<u>1st year</u>	<u>2nd year</u>	<u>3rd year</u>
Journeyman	A	6.50	6.75	7.00
	B	6.00	6.25	6.50
Metal Worker	A	5.00	5.25	5.50
	B	4.25	4.50	4.75
Laborer		3.25	3.50	3.75

Metal workers may be hired at twenty-five (\$.25) cents below the above rates, but shall receive the rate after thirty (30) calendar days.

Foremen who perform work with tools shall be paid not less than sixty (\$.60) cents per hour above the hourly rate specified above for each classification.

No employee shall be subject to any reduction in pay.

Annexed hereto and made part hereof is a schedule of classifications.

XXXV

NO STRIKE - NO LOCKOUT

There shall be no strike, or stoppage of work, nor shall

CLASSIFICATIONS

Each employee shall be classified in one of the hereinafter specified classifications which covers the work operation(s) such employee performs.

A. Foreman

There shall be at least one Foreman in each shop. Foremen performing work with tools shall be members of the Union. It is understood that the foregoing provision requiring Foremen who work with tools to be members of the Union shall not apply to those Shop Foremen who work occasionally with the tools in emergencies when regular employees are not immediately available, in instruction of employees, in the performance of necessary work when production difficulties are encountered.

B. Journeymen (Lead Men)

Employees in this classification work with tools, layout, direct, interpret for and instruct metalworkers in all work assigned by Foremen or the Shop Manager.

Journeymen shall be skilled craftsmen, capable of license qualification where required and working under written, printed, or verbal assignments.

There may be up to two levels of Journeymen identified as Class A or B. Assignment by class shall be made by agreement between the Union and the Employer.

C. Metalworkers

Employees in this classification shall be qualified and capable of performing repetitive work of any nature after an initial instruction and assignment.

There may be up to two levels of Metalworker identified as Class A or B. Assignment by class shall be made by agreement between the Union and the Employer.

D. Laborers

Their work shall include but not be limited to loading and unloading trucks; moving and handling materials; brush coating paint; rust, scale, burr and flash removal; and the use of equipment incidental thereto.

Laborers may also operate air or electric spray, baking, cleaning and/or conveying equipment.

The parties agree to negotiate and establish an apprentice program.

XXXVI

NO DISCRIMINATION

The Employer and the Union agree not to discriminate against any individual with respect to hiring, compensation, terms or conditions of employment because of such individual's race, color, religion, sex, national origin or age (between the years of forty (40) and sixty-five (65)) nor will they limit, segregate or classify employees in any way to deprive any individual employee of employment opportunities because of race, color, religion, sex, national origin or age (between the years of forty (40) and sixty-five (65)).

The Employer and the Union agree that there will be no discrimination by the Employer or the Union against any employee because of his or her membership in the Union or because of any employee's lawful activity and/or support of the union.

XXXVII The Management of the Employer's business and the direction of its operation not modified by this agreement are vested in the Employer.

XXXVIII TERM OF AGREEMENT

The term of this Agreement shall commence on October 14, 1975, and expire on October ⁵~~15~~, 1978, at midnight. *Se*
78

Negotiations for a new agreement shall commence sixty (60) days prior to the expiration hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

EMCO STEEL INC.

BY

Seymour Grey Pres.

LOCAL 810, STEEL, METALS, ALLOYS
AND HARDWARE FABRICATORS AND WARE-
HOUSEMEN, affiliated with INTERNA-
TIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS
OF AMERICA

BY

Dennis M. Silverman Pres.
President

** [Signature]*
John Dick
Thomas M. Gamm

328a



Telegram

BJC070(1045)(2-015395 E260) PD 09/17/75 1045

ICS IPMMTZZ CSP

2126892690 TDMT NEW YORK NY 97 09-17 1045A EST

PMS EMCO STEEL INC, REPORT DELIVERY, DLR

961 GRAND ST

BROOKLYN NY 11211

YOU ARE ADVISED THAT THE UNDERSIGNED LOCAL REPRESENTS THE
OVERWHELMING MAJORITY OF YOUR EMPLOYERS IN A UNIT CONSISTING OF
PRODUCTION AND MAINTENANCE EMPLOYEES. ACCORDINGLY, WE HEREBY REQUEST
A MEETING FOR THE PURPOSE OF DISCUSSING TERMS AND CONDITIONS OF
EMPLOYMENT IF YOU HAVE ANY QUESTION TO OUR MAJORITY STATUS WE ARE
WILLING TO DEMONSTRATE THE SAME TO ANY IMPARTIAL PERSON OR AGENCY
AGREED TO BY MANAGEMENT AND THE UNION. WE SUGGEST THAT YOU CONTACT
US IMMEDIATELY TO SET UP A MEETING BY CALLING GR52226, UNION
HEADQUARTERS

WILLIAM COLAVITO PRESIDENT SHOPMANS LOCAL UNION 455 853 BROADWAY

SF-12C1 (75-59)

EXHIBIT 4 - TELEGRAM FROM SHOPMEN'S LOCAL UNION NO. 455
TO EMCO STEEL, INC. (pp. 328a-329a)

G.C. 5
sc 702 10
3/10/76
RECEIVED

329a

Telegram

TO	FROM OR C/O	CASH NO	CHARGE TO THE ACCOUNT OF	THIS MESSAGE WILL BE SENT	PRESS	OVER NIGHT
			Sipser, Weinstock, Harger & Dorn 380 Madison Avenue, NYC 10017	OTHER INDICATED	DPR NPR	TELEGRAM

The following message is subject to the Telegraph Company's conditions, rules and regulations, which are on file with regulatory authorities.

Account No. CNY107403

SEPTEMBER 17, 1975

EMCO STEEL INC.
961 GRAND STREET
BROOKLYN, NEW YORK 11211

YOU ARE ADVISED THAT THE UNDERSIGNED LOCAL REPRESENTS THE OVERWHELMING MAJORITY OF YOUR EMPLOYEES IN A UNIT CONSISTING OF PRODUCTION AND MAINTENANCE EMPLOYEES. ACCORDINGLY, WE HEREBY REQUEST A MEETING FOR THE PURPOSE OF DISCUSSING TERMS AND CONDITIONS OF EMPLOYMENT. IF YOU HAVE ANY QUESTION AS TO OUR MAJORITY STATUS WE ARE WILLING TO DEMONSTRATE THE SAME TO ANY IMPARTIAL PERSON OR AGENCY AGREED TO BY MANAGEMENT AND THE UNION. WE SUGGEST THAT YOU CONTACT US IMMEDIATELY TO SET UP A MEETING BY CALLING GR 5-2226, UNION HEADQUARTERS.

WILLIAM COLAVITO, PRESIDENT
SHOPMEN'S LOCAL UNION NO. 455
853 BROADWAY
NEW YORK, NEW YORK 10003

WESTERN UNION: PLEASE
REPORT DELIVERY OF
THIS TELEGRAM

114
700
3/10/74

330a

EXHIBIT 5 - SHOPMEN'S LOCAL UNION NO. 455 AUTHORIZATION
FOR REPRESENTATION CARD OF DANO COLI

AUTHORIZATION FOR REPRESENTATION
Shopmen's Local Union No. 455 of
International Ass'n of Bridge, Structural and Ornamental Iron Workers

I, the undersigned, employee of the EMCO
(Name of Company)
ELYN (City) NY (State)
employed as Mechanic (Job Title) Shift No. _____
Badge or Clock No. _____ Telephone No. DE 51299
residing at _____ (Street Address) _____ (City) _____ (Zone) _____ (State)

hereby authorize and designate Shopmen's Local Union No. 455 of the International Association of Bridge, Structural and Ornamental Iron Workers (affiliated with the A. F. of L.) to act as my sole and exclusive agent and representative for all purposes of collective bargaining, whether under the operation of the National Labor Relations Act or otherwise.

Date 9-15-75 Signature Dano Coli
(Employee)

(This card is not an application for Union membership)

EXHIBIT 6 - SHOPMEN'S LOCAL UNION NO. 455 AUTHORIZATION
FOR REPRESENTATION CARD OF JOHN FRICK

AUTHORIZATION FOR REPRESENTATION
Shopmen's Local Union No. 455 of
International Ass'n of Bridge, Structural and Ornamental Iron Workers

I, the undersigned, employee of the EMCO
(Name of Company)
Brooklyn (City) _____ (State)
employed as Mechanic (Job Title) Shift No. _____
Badge or Clock No. _____ Telephone No. ND 1-2
residing at _____ (Street Address) _____ (City) _____ (Zone) _____ (State)

hereby authorize and designate Shopmen's Local Union No. 455 of the International Association of Bridge, Structural and Ornamental Iron Workers (affiliated with the A. F. of L.) to act as my sole and exclusive agent and representative for all purposes of collective bargaining, whether under the operation of the National Labor Relations Act or otherwise.

Date 9/15/75 Signature John Frick
(Employee)

(This card is not an application for Union membership)

331a

EXHIBIT 10(a) - SHOPMEN'S LOCAL UNION NO. 455's STANDARD
COLLECTIVE BARGAINING AGREEMENT (pp. 331a-404a)

GC 10-A
SC
Zac 10
3/11/76
(E102)

A G R E E M E N T

between

SHOPMEN'S LOCAL UNION NO. 455

of the

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL
AND ORNAMENTAL IRON WORKERS

(Affiliated with A.F.L.-C.I.O.)

and

Name of Company

City

State

Effective Date _____

INDEX

	<u>Section No.</u>	<u>Page No.</u>
Bargaining Unit.....	1	1
International Union.....	2	2
Union Recognition.....	3	3
Union Security.....	4	4
Check-off of Union Dues.....	5	5
Hours of Work.....	6	6
Overtime Work.....	7	7
Holidays.....	8	8
Reporting Pay and/or Allowed Pay.....	9	9
Grievances and/or Arbitration Procedures.....	10	10
Strikes and Lockouts.....	11	11
Plant Visitation.....	12	12
Seniority.....	13	13
Leave of Absence.....	14	14
Non-Discrimination.....	15	15
Vacations.....	16	16
Bulletin Boards.....	17	17
Safety and Health.....	18	18
Piece, Bonus and Contract Work.....	19	19
Subletting of work.....	20	20
Erection and Field Fabrication.....	21	21
Pay Days.....	22	22
Saving Clause.....	23	23
Wage Rates and Classifications.....	24	24
Wash-Up and Rest Periods.....	25	25
Welfare Fund.....	26	26
Pension Fund.....	27	27
Sick Leave Fund.....	28	28
Apprentice, Training-Upgrading Trust Fund....	29	29
Annuity Fund.....	30	30
Severance Pay.....	31	31
Trust Fund Protection.....	32	32
Termination.....	33	33

A G R E E M E N T

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THIS AGREEMENT, executed and effective as of the _____
day of _____, 19____, by and between _____

(Name of Company)

(Street Address)

(City)

(State)

(including its successor or assigns), hereinafter referred to as the "Company", and Shopmen's Local Union No. 455 of the International Association of Bridge, Structural and Ornamental Iron Workers (AFL-CIO), hereinafter referred to as the "Union", as the agent for and acting in behalf of the Company's production and maintenance employees, as the terms "production and maintenance employees" are defined in Section 1 hereof.

Should the Company sell its plant or plants covered by this Agreement to a Company which does not have a contract with the Union, or should the Company sell or merge its plant or plants or operations with a Company which does not have a contract with the Union, the purchaser of such plant or plants, and/or the merged Company shall abide by the terms set forth in this Agreement, beginning with the date of purchase or merger until this Agreement expires.

Should the Company move its plant or plants to a new location or locality outside the Metropolitan area, or merge its operations with those of another Company located outside the Metropolitan area which does not have a contract with the Union, or sell its operations to a Company located outside the Metropolitan area which does not have a contract with the Union, the Company, merged Company, or purchaser shall continue to be bound by the terms of this agreement until its expiration date.

SECTION 1MAINTAINING UNIT

This agreement shall be applicable to all production and maintenance employees including plant clericals employees of the Company (hereinafter referred to as "employees") engaged in the fabrication and/or manufacture of all ferrous and non-ferrous metals, iron, steel, and other metal products, including plastic products, also all maintenance employees of the Company engaged in maintaining machinery and equipment and other maintenance work in or about the Company's shop or shops, and to work done by such production and maintenance employees. This agreement is not intended and shall not be construed to extend to office clerical employees, superintendents, or to employees who are represented by any other union affiliated with the AFL-CIO with whom the Company has signed a collective bargaining agreement. This agreement is not intended and shall not be construed to extend to erection, installation or construction work, or to employees engaged in such work.

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SECTION 2INTERNATIONAL UNION

The International Association of Bridge, Structural and Ornamental Iron Workers, the parent body of the Union (Hereinafter referred to as the "International") is not a party to this agreement and similarly shall have no right to redress thereunder against the Company for the breach hereof. However, before this agreement and any amendments thereto may become binding and effective, the International must approve this agreement and/or such amendments as to form. Such approval by the International as to form shall not be construed to make the International a party to this agreement or any amendments thereto or make said International, or any of its officers or agents, responsible or liable for any breach of this agreement or any amendments thereto: and similarly such approval by the International as to form shall not be construed to give said International, or any of its officers or agents, any right of redress against the Company for breach hereof.

SECTION 3UNION RECOGNITION

The Company recognizes the Union as the exclusive representative and agent of all of the Company's production, maintenance and plant clerical employees as defined in Section 1 hereof, for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment and other conditions of employment.

SECTION 4SECURITY

(A) Each of the Company's employees included in the bargaining unit described and set forth in Section 1 hereof shall, as a condition of employment be or become a member of the Union not later than the thirty-first day following the effective date of this Agreement, or not later than the thirty-first day following the beginning of his or her employment, whichever is the later; and each such employee shall, as a condition of continued employment, remain a member of the Union in good standing to the extent authorized by Section 8(a)(3) of the Labor-Management Relations Act, 1947.

(B) Upon receipt of a written notice from the Union that an employee has not acquired membership in the Union or has not maintained his or her membership in good standing therein as provided for in Subsection (a) of this Section, the Company shall notify such employee that as a condition of employment he or she must comply with the provisions of Subsection (A) above within the next succeeding three (3) work days; and if, at the end of such three (3) work days, the employee does not furnish the Company documentary proof of compliance, such employee shall be discharged.

(C) The Company agrees that in the event that it requires
(Section 4 continued on page 4-a)

Section 4. (Continued)

Additional employees in the classifications of employment covered by this Agreement, it shall hire such additional employees from an employment office operated by the Union. In the event that said employment office is unable to supply help satisfactory to the Company within three (3) working days following the request, the Company shall be free to hire in the open market. The facilities of the Employment office operated by the Union shall be made available to both members and non-members of the Union and the Union warrants that in the operation of said employment agency and in referrals to the Company it will not discriminate against any individual applicant for employment because of non-membership in the Union or otherwise restrain or coerce such applicant because of non-membership in the Union. Any employee hired from the open market shall, promptly following his employment, be required to register and secure a registration slip as evidence of such registration at the Union employment office for the purpose of assisting the Union in administering this Agreement, and in observing and maintaining the standards desired by the Company in filling vacancies. The Company shall promptly notify the Union whenever such employees are hired.

(D) The expense of maintaining the Employment Office shall

(Section 4 continued on page 4 b)

Section 4. (Continued)

be borne by all individuals registered for employment through it. Said individuals shall be placed on a roster maintained in the Employment Office and shall be known as "Registrants." Registrants who are not members of the Union shall be required to pay a sum not in excess of the pro rata share of the expenses of maintaining and operating the Employment Office which is being borne by each Union member. Payment of his pro rata share of expenses is to be made by the Registrant to the Union at the Employment Office for each month in which he is registered. Failure of a Registrant to make such payment or to comply with the rules of the hiring hall uniformly applied (which shall not be in conflict with any applicable law), shall result in the removal of his name from the roster.

(E) 1. Selection of applicants for referral to jobs shall be on a non-discriminatory basis and shall not be based on or in any way affected by union membership, by-laws, rules, regulations, constitutional provisions, or by any other aspect or obligation of Union membership, policies, or requirements or by race, creed or color.

2. The parties to this agreement shall post in places where notice to employees and applicants for employment are customarily posted, namely at the employment office of each Company, and

(Section 4 continued on page 4-c)

Section 4. (Continued)

of the local union, all provisions relating to the functioning of the hiring arrangement.

3. Should any part hereof or any provisions herein contained be rendered or declared illegal, invalid or an unfair labor practice by reason of an existing or subsequently enacted legislation, or by any decree of a court of competent jurisdiction or by the decision of any authorized government agency, the remaining portions hereof shall not be affected thereby: provided, however, in such contingency the parties shall meet and negotiate with respect to substitute provisions for those parts or provisions rendered or declared illegal, invalid or an unfair labor practice.

SECTION 5CHECK-OFF OF UNION DUES

(A) Upon receipt of an authorization signed by any employee to whom this agreement is applicable, the Company shall, pursuant to the provisions of such authorization, deduct from such employee's earnings, on the first pay-day in each month, the amount owed to the Union by each such employee for Union dues; however, should any such employee have no earnings due him or her on the first pay-day in any month or should such employee's earnings be less than the amount such employee owes the Union for dues, then, in that event, the deduction shall be made from the employee's earnings on the next succeeding pay-day on which his or her earnings are sufficient to cover the amount of dues owed to the Union by such employee. On or before the 10th day of each month, the Company shall mail to the Financial Secretary of the Union a check made payable to the Union for the amount of dues the Company has withheld during such month, which shall be accompanied by a list, in duplicate, containing the names of the employees and the amount deducted from each such employee's earnings. Upon receipt of such check and list, said Financial Secretary of the Union shall sign one copy of such list, acknowledging receipt thereof, and promptly return such signed list to the Company.

(B) The Union shall keep the Company informed, in writing, of the amount of dues, including the amount of delinquent dues owed

(Section 5 continued on page 5-a)

Section 5. (Continued)

by each employee, if any. As of the effective date of this Agreement, the Union dues are \$10.00 per month. Such dues shall not be changed except in accordance with the applicable provisions of the International Constitution and/or By-Laws of the Union and, in such event, the Financial Secretary of the Union shall notify the Company, in writing, and the amount of monthly dues as so changed shall thereafter be deducted by the Company from each such employee's earnings. The aforementioned authorization directing the Company to make the deductions as hereinabove provided for, when signed by an employee, shall be irrevocable for the duration of this Agreement or for a period of one (1) year, whichever date occurs first; and in the event any such employee desires to revoke such authorization on either of such dates, written notice thereof shall be given by such employee to the Company in accordance with the applicable provisions of such authorization; and the Company agrees to furnish the Union a copy of such notice.

(C) It is expressly understood and agreed that, upon receipt of proper proof, the Union will refund to the Company, or to the employee involved, any Union dues erroneously withheld from an employee's earnings by the Company and paid to the Union.

343a
SECTION 6

HOURS OF WORK

Seven and one-half (7-1/2) consecutive hours, exclusive of the lunch period shall constitute a basic workday, and five (5) days, Monday through Friday (not to exceed 37-1/2 hours work), shall constitute a basic workweek for the first shift.

In the second and third shifts, if any, the basic workday shall consist of six and one-half (6-1/2) consecutive hours, exclusive of the lunch period, with pay for seven and one-half (7-1/2) hours (one and one-sixth (1-1/6) times the regular hourly rate of the employee in question); and five (5) such basic six and one-half (6-1/2) hour days, Monday through Friday (not to exceed thirty-two and one-half (32-1/2) hours) shall constitute a basic workweek for such shifts.

The Company shall maintain a regular schedule for the first shift forty (40) hours of work per week, consisting of eight (8) hours per day and for the second and third shift thirty-five (35) hours of work per week, consisting of seven (7) hours per day, with pay for eight (8) hours (one and one-seventh (1-1/7) times the regular hourly rate of the employee in question), and the employees shall be obliged to work such regularly scheduled workday and workweek, and the Employer shall be obliged to maintain such workday and workweek for the entire contract period.

(Section 6 continued on page 6-a)

Section 6. (Continued)

The regular starting time and quitting time of the various shifts, as herein provided for, may be changed from time to time by mutual agreement between the Company and the Union.

345a

Section 6. (Continued)

The regular starting time and quitting time of the various shifts, as herein provided for, may be changed from time to time by mutual agreement between the Company and the Union.

SECTION 7TIME PAY

(A) The first one-half (1/2) hour of work immediately following the end of the basic workday shall be compensated for at the regular straight time hourly rate.

(B) All work done by an employee before or after the regular work hours of any shift (i.e, eight (8) hours for the first shift and seven (7) hours for all other shifts), or of the regular workweek, shall be paid for at overtime rates as hereinafter provided.

(C) Overtime pay shall be computed as follows:
Overtime rates for work performed Monday through Thursday shall be paid for at the rate of time and one-half for the first two (2) overtime hours and thereafter at the rate of double-time. Overtime rates for work performed on Friday shall be paid for at the rate of double-time, it being understood no work shall be performed Friday beyond the hours regularly worked on Fridays, except the loading and unloading of trucks, and in cases of emergencies.

(D) All work performed on Saturday and Sunday shall be paid for at the rate of double-time, it being understood that no work shall be performed on Saturdays or Sundays, except as provided in Subsection (F) below.

(Section 7 continued on page 7-a)

Section 7. (Continued)

(E) All work done on any recognized holiday, or day observed as such, as provided in Section 8 of this Agreement, shall be paid for at three (3) times the employee's current regular straight-time hourly rate. However, employees assigned to the third shift for the day preceding such holiday, or day observed as such, shall complete such shift on the morning of such holiday at the rate applicable for the preceding day.

(F) No work shall be performed on Saturdays, Sundays, or any recognized holidays, or days observed as such, unless and until an official representative of the Union is notified verbally and confirmed in writing by a representative of the Company. Such notification shall specify the names of all employees who are scheduled to work on such Saturday, Sunday or holiday or day observed as such. Should the Company fail to provide such notification, the Company shall contribute to the Union's Sick and Disabled Fund an amount equal to eight (8) hours pay for each employee who worked on such Saturday, Sunday, or holiday, or day observed as such.

(G) When employees who have acquired three (3) months of seniority are on layoff, no overtime work shall be performed (except in cases of extreme emergency) which is covered by the classification in which such laid-off employee is classified.

(Section 7 continued on page 7-b)

7. (Continued)

(H) There shall be no discrimination in the assignment of overtime work; and overtime work shall, insofar as practical, be allocated equitably among the employees classified in the classification covering the work operation which is to be performed on an overtime basis. However, the shop steward shall be one of the employees assigned to overtime work.

(I) When overtime work is to be performed during the regular workweek, Monday through Friday, employees designated to perform such overtime work shall be given notice thereof no later than the end of the lunch break.

(J) There shall be no discipline imposed on any employee for his refusal to work overtime.

SECTION 8HOLIDAYS

(A) For the purpose of this Agreement, New Year's Day, Lincoln's Birthday, Washington's Birthday, Good Friday, Decoration Day, Fourth of July, Labor Day, Veteran's Day, Election Day, Thanksgiving Day, the day following Thanksgiving Day, the last working day before Christmas and Christmas Day or days observed as such, shall be recognized as holidays. Should any of the foregoing holidays occur on Sunday, the following Monday instead of such Sunday shall be recognized and observed as the holiday in question. No work of any description shall be performed on Labor Day, except in case of extreme emergency.

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(B) The above holidays or days observed as such, shall be paid holidays, i.e., eight (8) hours straight time shall be paid therefor when no work is performed on any of such days, regardless of the day of the week upon which any such holiday occurs, including a holiday that occurs or is observed on Saturday. Holidays that occur during the vacation period of any employee shall be paid for in addition to vacation pay.

(C) In order for an employee to be eligible to be paid eight (8) hours straight time pay when no work is performed on any of the holidays specified in subsection (A) above, or days observed as such, he must have performed work for the Company during

(Section 8 continued on page 8-a)

Section 8. (Continued)

the scheduled workweek in which the holiday occurs or is observed, unless failure to perform work during such week was because of being on paid vacation, as hereinafter provided for in this Agreement, or because of confirmed illness or injury that occurred or commenced during the sixty (60) days immediately preceding the holiday in question, or because of layoff by the Company that commenced during the fifteen (15) days immediately preceding the holiday in question, or for such other absence as shall have been authorized, directed or approved by the Company. New employees hired during the workweek in which a holiday occurs, shall not be entitled to pay for such holiday when no work is performed on such day by such employee, unless such employee performs work on a regular workday in the workweek prior to the occurrence of the holiday in question.

Beginning 7-1-75 one additional Holiday -

SECTION 9REPORTING PAY AND/OR ALLOWED PAY

(A) Any employee ordered to report to work by an authorized Representative of the Company and who is not put to work, or who shall have appeared for work on a regular workday without previously having been informed by an authorized Representative of the Company not to report, shall, if able and willing to work, be paid for four (4) hours at the applicable rate for such day.

(B) Any employee commencing work on any day shall, unless failure to continue to work is due to the voluntary act or fault of the employee, or through an Act of God, be paid for not less than eight (8) hours at the applicable rate for such day. It is understood that an Act of God shall include, among other things, such things as fire of any nature, flood, failure of electricity or other sources of power beyond the control of the Company.

In the event that an Act of God prevents employees from continuing to work, the Company shall keep the employees available at the premises for two (2) hours during which they shall perform as directed. In the event that an Act of God occurs during the first two (2) hours the employees shall be paid a minimum of four (4) hours. If an Act of God occurs after the first two (2) hours, the men shall be paid the actual time worked

(Section 9 continued on page 9-a)

9. (Continued)

two (2) hours, but in no event shall any employee be paid more than a full day's pay plus pay for overtime worked.

(C) Any person who is sent by the Union to the Company's shop, in response to a request made by an authorized Representative of the Company, shall, if able and willing to work and is not put to work, be paid for three (3) hours pay at the applicable rate for the work operation such person would have otherwise been assigned to, if such plant is in production.

(D) Any employee injured at the Company's plant, who is sent to a doctor and returns to work during his or her regular working hours the same day, shall be paid by the Company the applicable wage rate for such time thereby lost on such day by such employee; and if he or she shall, on any subsequent day on which he or she performs work for the Company, go to the doctor for treatment of such injury during his or her regular working hours or called to attend a compensation hearing in such case, he or she shall be paid by the Company the applicable wage rate for such time thereby lost on such day by such employee, but in no event for more than two (2) hearings on any one injury. Should an injured employee be admitted to a hospital or be instructed by the Company or the doctor to refrain from performing further work on the day such employee is injured, such employee shall receive the applicable hourly rate for the entire workday.

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SECTION 10GRIEVANCES AND/OR ARBITRATION PROCEDURESOK
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(A) A chief Shop Steward and/or one (1) or more Shop Stewards shall be appointed by the Union from among the employees who are employed by the Company. Shop Stewards shall not be discharged or discriminated against for performing the duties required of a Steward, and in cases of layoffs and re-hires, the Chief Shop Steward shall be recognized as having a seniority status which is in excess of the seniority status of all other employees. The Assistant Shop Steward shall be recognized as having seniority status which is in excess of the seniority status of all other employees within his classification. Before a Shop Steward shall be laid off or discharged, the Company shall notify the Union, in writing, of such layoff or discharge, and a joint meeting between a designated representative(s) of the Union and a designated representative(s) of the Company shall be held to determine the justification for such layoff or discharge. If the discharge of any Steward is contested by the Union, the Steward shall remain on the job until such time as there is an arbitrator's decision sustaining such discharge providing that the Union institutes the said arbitration within five (5) days after notification of the discharge. If the Company violates this clause, the Union shall have the right to withdraw the employees, who shall suffer no loss of wages as a result thereof.

(B) The Chief Shop Steward and/or Shop Stewards shall have

(Section 10 continued on page 10-a)

authority to meet with representatives of the Company, individually or as a Committee, to represent the employees covered by this agreement for the purpose of adjusting complaints, disputes or grievances which may be submitted to such Stewards by an aggrieved employee or employees. In the event such Stewards are unable to obtain proper adjustment of such complaints, disputes or grievances as a result of such meeting with representatives of the Company, the matter in question shall be referred to the Business Agent(s) of the Union for the purpose of obtaining proper settlement of the matter in question, and in the event the Business Agent(s) of the Union and representative of the Company are unable to settle such complaints, disputes or grievances, same shall be referred to arbitration as hereinafter provided for in this section.

(C) The Shop Stewards provided for and mentioned in this Section shall have and possess power and authority to act for and bind the Union, only in connection with those functions, rights, obligations, and matters provided for in this agreement. They shall not have, or be deemed to have, any other authority to act for or bind the Union.

(D) Any difference, grievance, or dispute which is not settled, as hereinabove provided for in this Section and any difference or dispute between the Company and the Union arising out of this

(Section 10 continued on page 10-b)

Section 10. (Continued)

Agreement or as to the meaning application or alleged violation of any provision, or provisions of this agreement shall, upon request of either party to this Agreement be submitted to an arbitrator designated by the American Arbitration Association, in accordance with its rules and regulations. "The Arbitrator's decision shall be final and binding upon the employee(s) involved and upon the parties to this Agreement."

(E) The foregoing provisions for arbitration are not intended and shall not be construed as in any wise qualifying or making subject to change any term or condition of employment specifically covered by this Agreement. The expense of the arbitrator shall be borne fifty (50%) percent by the Company and fifty (50%) percent by the Union.

SECTION 11STRIKES AND LOCKOUTS

(A) The Company agrees not to cause, permit or engage in any lockout of its employees during the term of this agreement, except for refusal of the Union to submit to arbitration in accordance with Section 10, or failure on the part of the Union to carry out the award of the arbitrator. The Union agrees that it will not, nor will its members in concert, during the term of this Agreement, cause, permit, or take part in any strike, picketing, sit-down, stand-in, intentional slow-down or curtailment or restriction of production or interference with work in or about the Company's plant(s) or premises, except for refusal of the Company to submit to arbitration in accordance with Section 10, or the failure on the part of the Company to carry out the award of the arbitrator or where herein otherwise specifically provided.

(B) The term "intentional slow-down of production" shall mean a condition of wilful restriction of production by an employee which is within such employee's reasonable control.

(C) Should an employee or employees engage in any strike, picketing, sit-down, stand-in, intentional slow-down or curtailment or restriction of production or interference with work in or about the Company's plant(s) or premises before a grievance has been

(Section 11 continued on page 11-a)

Section 11. (Continued)

submitted, as provided for in Section 10, or during the period a grievance is being processed, in accordance with the provisions of Section 10, including the arbitration provisions thereof, and should the Company notify the Union or any of its officers of such action, a Representative of the Union shall, as promptly as possible, instruct such employees to forthwith cease such action and promptly return to their respective jobs and comply with the applicable provisions of this agreement.

(D) The Company agrees that in consideration of the performance by the Union as set forth in Subsection (C) above with respect to any strike, picketing, sit-down, stand-in, intentional slow-down or curtailment or restriction of production or interference with work in or about the Company's plant(s) or premises which is contrary to the provisions of this Section, there shall be no liability for damages on the part of the Union, its officers, agents, or members for breach of contract, by suit or otherwise.

(E) Employees to whom this agreement is applicable shall not be required in the course of their employment to cross any picket line established in connection with any labor dispute, nor shall any employee be discharged or disciplined for refusal to cross any such picket line.

SECTION 12

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PLANT VISITATION

Business Agents and/or other authorized representatives of the Union shall be permitted to enter the shop of any Company, to whom this agreement is applicable, without undue delay, at any time during which any employees are working for the purpose of investigating complaints and/or working conditions.

Company Rep. should be notified ^{before} when they enter the shop.

Section 13. SENIORITY

(A) Employees shall be regarded as probationary employees until they have worked for the Company within the bargaining unit described and set forth in Section 1 of this agreement for a period of thirty (30) days, and during such probationary period, such probationary employees may be laid off or discharged without reference to length of service. When employees complete the aforementioned probationary period, they shall have a seniority status in their classification in accordance with their length of continuous service from the date of hiring. Layoffs due to lack of work, illness of the employee, or for other causes not due to the voluntary act or fault of the employee shall not constitute interruptions of continuous service, as those terms are used in this Section; and the employee's seniority status shall not be affected by such interruptions; provided, however, the continuous service of any employee and his or her seniority status based thereon shall be terminated for the following reasons:

1. Absence from work for three (3) consecutive days without notifying the Company of the reason for such absence, unless the employee can prove that his or her failure to give such notice was due to circumstances beyond his or her control.

(Section 13 continued on page 13-a)

Section 13. (continued)

2. Failure to report for work and return to work when laid off, within seven (7) days after being notified by certified mail requesting him or her to do so. Any employee who is laid off shall keep the Company advised, in writing, of his or her current address, and the Company shall notify such employee, by certified mail addressed to such address, when an opening is available for him or her in line with his or her seniority status. Such notice shall specify the date and hour to report for work. A copy of such notice shall be given to the Shop Steward within twenty-four (24) hours after same is mailed or sent. Upon receipt of such written notice, the employee will notify the Company whether or not he or she will report for work at the time requested.
3. Discharge for proper cause.
4. When an employee resigns, quits, or accepts a position with the Company which is not included in the bargaining unit.

(Section 13 continued on page 13-b)

Section 13. (continued)

5. Failure of an employee to report to work and return to work following the conclusion of an approved leave of absence, as provided for in this agreement.
6. When an employee has not performed any work for the Company, within the bargaining unit, for eighteen (18) consecutive months, for reasons other than injury or illness.

(B) In all cases of promotions (except to supervisory positions not covered by this agreement) and in all cases of increase or decrease of forces, employees shall be given preference in their classification in accordance with their length of continuous service. Employees may be given a temporary promotion with a trial period of thirty (30) days, and in such event the employees involved shall be paid the appropriate rate provided for elsewhere in this agreement for the work operation to which the employee(s) is temporarily promoted. If a layoff occurs in the classification from which the employee was promoted within ninety (90) days of that promotion, that employee must be demoted for purposes of layoff. ck

(Section 13 continued on page 13-c)

Section 13. (continued)

(C) No employee in a higher rated classification shall do the work of an employee in a lower rated classification if it results in the layoff of an employee in the lower rated classification with greater seniority. OK

(D) If during the term of the agreement, the Company undertakes work for which the classifications contained in this agreement are not applicable, or should a new work operation be established, or should a type of machinery be installed in the Company's plant, the operation of which would require employees to be trained therefor, then, in either of such events, preference for assignments to such work shall be given employees with the greatest length of continuous service with the Company. OK

(E) All layoffs of employees shall be made as a result of a reduction of forces in accordance with the provisions of the first paragraph of this Subsection, and an employee shall not be discharged except for proper cause. Employees may be required to perform any of the work which is generally covered by the classification.

(Section 13 continued on page 13-d)

Section 13. (Continued)

in which he or she is classified, and if the performance of such work is in accordance with the generally recognized shop requirements, employees shall not be subject to be laid off, except as a result of a reduction of force as hereinabove provided; however, if an employee is assigned to a type of work which he has not previously performed, and if, after being given a reasonable opportunity to learn to perform such work, he or she is unable to do so, then, in that event, the employee shall be subject to be laid off, if no other work is available.

(F) When it is necessary to lay off the employees in any classification, all probationary employees classified in such classification shall be laid off before any other employees are laid off. OK

(G) The Company will post on its Bulletin Board lists showing the current seniority standing of each employee and will furnish the Union a copy of each such list. Revised lists will be posted every two (2) months. Any appeals from the seniority list as posted must be made within ten (10) regular work days of posting; otherwise, the list will be considered final. OK

(H) If any mechanic shall have greater seniority than an apprentice, the apprentice must be laid off before the mechanic. OK
It is understood, however, in all other respects apprentices are entitled to tenure and all rights and benefits under this agreement.
(Section 13 continued on Page 13-c)

Section 13. (Continued)

(f) Any employee who has been on the payroll for one (1) week or more and who is laid off or terminated for any reason shall be notified by the Company one (1) work day in advance of such layoff or termination, except in cases of discharge for proper cause or in emergency situations; and if not so notified shall be paid for eight (8) hours at such employee's regular hourly rate. Furthermore, except in cases of temporary layoff for a period of five (5) work days or less, employees when otherwise laid off shall be allowed one-half (1/2) hour in which to pack their tools, etc., or, in lieu thereof, shall receive one-half (1/2) hour additional pay at their regular rate of pay.

SECTION 14LEAVE OF ABSENCE

(A) Leaves of absence without pay shall be granted by the Company to any employee (except probationary employees) without prejudice to the employee's seniority or other rights. All approval of leaves of absence shall be made in writing which shall be signed by a designated representative of the Company and the Shop Steward for the Union, copy of which shall be furnished the employee and the Union. Leaves of absence will be for a period of not more than thirty (30) days; however, it may be extended upon request by the employee, subject to the approval of such request in writing by the Company, signed by a designated representative of the Company and the Shop Steward, copies of which shall be furnished the employee and a copy mailed to the Union. (K)

(B) Any employee employed by the Company who is elected or appointed to an official position with the Union, which requires that he or she discontinue employment with the Company in order to perform the duties of such position, shall be granted a leave of absence, in writing, signed by a designated representative of the Company, for the period of such position, including any renewals thereof; and during the period of such (Section 14 continued on page 14-a) *if*

Section 14. (Continued)

leave of absence, such employee shall retain his or her seniority status and other rights for the duration thereof.

If an employee has an official position with the Union, he shall be permitted time off to perform duties.

(C) The Company shall give employees time off with pay to secure a renewal of any license which is necessary in connection with his work. The Company shall also pay for the cost of such renewal. ck

When the Company determines it requires additional licensed employees, it shall select the most senior qualified employee to apply for the same. The employee shall be given time off with pay to take the test and the Company shall pay for the test as well as for the license.

(D) Employees shall be granted three (3) days paid leave in case of death in the employee's immediate family. The immediate family is defined to cover the employee's spouse, parents of the employee and spouse, blood brothers and sisters of the employee and spouse, and children of the employee or spouse. Proof shall be submitted if required. ck

SECTION 15NON-DISCRIMINATION

(A) Neither the Company nor the Union, nor any party to this agreement, shall pass, establish, or attempt to enforce any rule or regulation or requirement which would constitute a violation of this agreement, or be inconsistent or in conflict with the provisions of this agreement. OK

(B) There shall be no discrimination against any employee, with respect to any term of employment or otherwise, by reason of race, color, creed, sex, or age; nor shall any employee be disciplined or discharged except for proper cause. OK

(C) The amount of work a member of the Union may perform shall not be restricted or interfered with by the Union or by its officers or members. OK

(D) Employees as a condition of continued employment shall not be required to undergo a physical examination. OK

SECTION 16VACATIONS

(A) Employees shall be entitled to the following vacation benefits with pay therefor:

One (1) year but less than two (2) years continuous service in the industry in accordance with paragraph (E) (1) below, shall receive one (1) week vacation.

Two (2) years but less than ^{seven} eight (8) years continuous service in the industry in accordance with paragraph (E) (1) below, shall receive two (2) weeks vacation.

^{Seven} Eight (8) years but less than fifteen (15) years continuous service in the industry in accordance with paragraph (E) (1) below, shall receive three (3) weeks vacation.

Fifteen (15) years but less than twenty (20) years continuous service in the industry in accordance with paragraph (E) (1) below, shall receive four (4) weeks vacation.

Twenty (20) years or more continuous service in the industry in accordance with paragraph (E) (1) below, shall receive five (5) weeks vacation.

OK (B) For the 1975 Vacation Period, employees shall be entitled to 110% of their vacation pay.

OK (C) A vacation schedule shall be posted in the plant not later than April 15th of each year, and a vacation period shall be designated between June 1st and September 30th except that employees with children under 18 years of age shall not be obliged

(Section 16 continued on page 16-a)

Section 16. (Continued)

to take their vacation in June and such employees who do not desire a June vacation shall immediately notify the Company if they are scheduled for such a vacation whereupon they shall be assigned a new vacation in accordance with past practice in the Company. On request of an employee and consent of the Company and Union other period or periods may be selected, such request shall not be denied except for good cause.

(D) Employees shall receive their vacation moneys from the Local 455 Industry Vacation Fund provided for in subsection (E) below. The Company shall not be responsible for vacation payments other than the stated contributions to the Vacation Fund. All companies which became members of Allied and which are not listed on Schedule A at the signing of this Agreement shall pay vacation benefits directly to their employees except to the extent assumed by the Vacation Fund under its rules and regulations.

(E) (1) Commencing July 1, 1973, the Company shall contribute seven and one-half (7-1/2) per cent of the weekly payroll of all employees who are covered by this collective bargaining agreement, employed by the Company, to a Joint Board of Trustees composed of an equal number of representatives from and named by the Union and an equal number of representatives named by

(Section 16 continued on page 16-b)

Section 16. (Continued)

allied Building Metal Industries, Inc. and representing the companies (each member of the Association) and all other Employers with whom the Union has collective bargaining agreements. The contributions shall be applied by the said Board of Trustees to an industry vacation fund to be created under an appropriate Agreement and Declaration of Trust to be operated as the "Local 455 Industry Vacation Trust Fund" for the purpose of establishing and paying for pooled vacation benefits, in accordance with a Vacation Plan and rules and regulations therefor to be adopted by the Trustees, and for the organization and administration of the Fund. The Fund, including its plan of benefits, shall be established in conformity with all requirements of law and shall be submitted to the Treasury Department for approval as a qualified plan.

(2) Commencing July 1, 1974, the Company shall contribute eight and one-half (8-1/2) per cent of the weekly payroll of all employees who are covered by this Agreement, employed by the Company, to the Trustees of the said Local 455 Industry Vacation Trust Fund.

(3) Under the said Agreement and Declaration of Trust, the Joint Board of Trustees shall provide vacation benefits and establish rules and regulations consistent with this Agreement and existent benefits and conditions.

(Section 16 continued on page 16-c)

(4) Payments to the Trustees of said Local 455 Industry Vacation Trust Fund provided for in this subsection shall be made monthly and shall be paid in full by the Company not later than the tenth of each month following the month for which such payments are applicable.

(F) Employees eligible for one (1), two (2) and three (3) weeks vacation pay shall be required to take their vacation.

Employee eligible for more than three (3) weeks vacation pay shall be required to take three (3) weeks of such vacation and, by mutual agreement between the employee and the Company, the employee may refrain from taking such additional weeks vacation. OK

If there are any employees on layoff, then employees on the job, in the classification in which such layoff exists, must be given time off instead of vacation pay for weeks over three (3) in number.

SECTION 17BULLETIN BOARDS

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The Company shall provide the Union with Bulletin Board space in its plant(s), to be used for the posting of notices relating to Union matters.

BEST COPY AVAILABLE

SECTION 18SAFETY AND HEALTH CK

(A) A Safety and Health Committee shall be established in each plant covered by this agreement, which shall consist of a representative of the Union employed by the Company and a representative of the Company; and such Committee shall, at least once each month, make a thorough inspection of the plant for the purpose of assisting in the planning of a safety program. In the event the Safety and Health Committee discovers conditions which in its opinion, are dangerous or would adversely affect the health, life and limb of employees, such conditions shall be reported to the Company for correction and efforts to correct such conditions shall be initiated by the Company within forty-eight (48) hours. If, in the opinion of either of the members of the Safety and Health Committee, unsafe and/or unsanitary conditions exist, which would be hazardous to the employees working in such locations, such employees shall be so informed by the Committeemen and the employees will not be required to perform any further work until such conditions are corrected.

(B) Welding shield, goggles, gloves, and equipment which an employee would not normally be required to acquire shall be provided by the Company. It is understood that the Company will also cover 50% of the cost of a standard pair of safety shoes limited to one pair a year to all active employees with three months or more of seniority. The Company shall also furnish employees, when necessary, such protective clothing as is necessary because of inclement weather.

(Section 18 continued on page 18-a)

Section 18. (Continued)

(C) Each employee shall be furnished, by the Company, an individual locker for his clothing and tools.

All toilets and washrooms shall be kept in a clean and sanitary condition, and shall be properly heated and ventilated and adequate soap and towels shall be provided. OK

(D) The Company shall provide the following: Water cooler; milk when welding or burning material which is coated with paint or that is galvanized: adequate exhaust system for removal of welding fumes and dust.

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SECTION 19

OK

PIECE, BONUS AND CONTRACT WORK PROHIBITED

There shall be no piece, bonus, or contract work done in the Shop and all work done shall be paid for at not less than the hourly rate of wages set forth in this agreement.

SECTION 20SUBLETTING OF WORK

(A) The Company agrees not to sublet any work of a type which is normally fabricated or manufactured in its plant or plants, covered by this agreement.

(B) The Company shall not perform the work of or act as a subcontractor for any employer against which the Union is conducting a strike, for the duration thereof.

SECTION 21ERECTION AND FIELD FABRICATION

The provisions of this agreement shall be applicable only to the employees of the Company comprising the bargaining unit described and set forth in Section 1 hereof, and to work done by such employees as described and set forth in such Section; and it is therefore specifically understood and agreed that the provisions of this agreement shall not be construed as being applicable to erection, field fabrication or construction work, or to employees engaged in such work, and the Company agrees it will not require any employee covered by this agreement to perform such work for the Company. It is understood and agreed that the foregoing provisions of this section shall not apply to Shopmen sent to the site of the construction to take measurements or to make templates.

SECTION 22PAY DAYS

The Company agrees to pay the employees on a regular stated pay day in each week in cash or by check during working hours. Employees shall be reimbursed once each month for the fee paid for cashing their checks provided same is cashed by a licensed check cashing agency. When an employee is laid off or discharged, he shall be paid off immediately in cash or by check. The Company is required to install a time clock and time cards in order to keep proper record of employees time worked. The Company must keep time cards and all other payroll records available for at least three (3) years. ok

SECTION 23

SAVING CLAUSE

It is assumed by the parties hereto that each provision of this agreement is in conformity with all applicable laws of the United States and the State of New York. Should it later be determined that it would be a violation of any legally effective Governmental or State Order or Statute to comply with any provision or provisions of this agreement, the parties hereto agree to renegotiate such provision or provisions of the agreement for the purpose of making them conform to such Governmental or State Order or Statute so long as they shall remain legally effective, and the other provisions of the agreement shall not be affected thereby.

SECTION 24RATES AND CLASSIFICATIONS

(A) Each employee shall be classified in that one of the hereinafter specified classifications which covers the work operation(s) such employee performs. OK

(B) Effective July 1, 1973, the wage rates of employees classified as "Foremen" and "Finishers" shall be increased forty-five (\$.45) cents per hour, and effective July 1, 1974, the wage rate of all employees classified as "Foremen" and "Finishers" shall be increased fifty (\$.50) cents per hour.

(C) Effective July 1, 1973, the wage rates of employees classified as "Mechanics" shall be increased forty (\$.40) cents per hour, and effective July 1, 1974, the wages of all employees classified as "Mechanics" shall be increased forty-five (\$.45) cents per hour.

(D) Effective July 1, 1973, the wage rates of employees classified as "Shop Helpers" and/or "Laborers" shall be increased thirty-five (\$.35) cents per hour, and effective July 1, 1974, the wage rate of all employees classified as "Shop Helpers" and/or "Laborers" shall be increased forty (\$.40) cents per hour.

 There shall be at least one Foreman in each shop, and Foremen who perform work with tools shall comply with the

(Section 24 continued on page 24-a)

Section 24. (Continued)

provisions of Section 4, Subsection (A) of this Agreement with respect to membership in the Union and shall be paid not less than sixty (\$.60) cents per hour above the hourly rate hereinafter specified for the classification of "Finishers". OK

(E) The minimum hourly rates shall be as set forth below:

	Effective <u>7/1/75</u>	Effective <u>7/1/74</u>
<u>FINISHERS</u> Who work from drawings and sketches and at least one (1) Finisher shall be employed for each nine (9) Mechanics	\$ 6.90 8.00	\$ 7.40
<u>MECHANICS</u> Employees classified in this classification shall not be permitted to work from blue prints, drawings or sketches	6.25 7.00	6.70
<u>SHOP HELPERS AND/OR LABORERS</u> Shop Helpers and/or Laborers shall not be permitted to handle any tools or machinery, except that Shop Helpers and/or Laborers who use air or electric sprayers to apply shop coats of paints shall receive twenty-five (\$.25) cents per hour more than the minimum rate herein specified. It is further agreed that the work of Shop Helpers and/or Laborers includes the unloading and loading of trucks, moving and handling material, applying priming or shop coats, or other work incidental thereto	5.40 6.35	5.80

(Section 24 continued on page 24-b)

Section 24. (Continued)

"Spray Painters" temporarily assigned for ten (10%) per cent or more of his time during any three (3) month period shall retain the higher rate of pay as a permanent feature of his rate.

Past practices established by custom (which are not in violation of the provisions of this Agreement) regarding the work covered by the foregoing classifications shall be maintained.

"Overhead Crane Operators" and "Boom Operators" shall be included in the classification of "Mechanics".

(F) Any employee receiving more than the minimum rate hereinabove specified for his or her classification shall not be reduced.

(G) The following provisions shall apply to "Apprentices":

	Effective 7/1/73	Effective 7/1/74
Start	\$ 4.65	\$ 5.10
After 6 months	4.80	5.25
After 1 year	5.00	5.45
After 1-1/2 years	5.25	5.70
After 2 years	5.55	6.00
After 2-1/2 years	5.90	6.35
After 3 years	6.25	6.70
		7.00

(Section 24 continued on page 24-c)

Section 24. (Continued)

After completion of three (3) years of apprenticeship, the employee shall be classified in the classification of "Mechanic" and paid not less than the appropriate rate applicable to such classification.

All Apprentices shall be paid in accordance with their previous length of service in accordance with the above schedule.

A new Apprentice shall not be employed so long as there is any Apprentice available for employment who was previously employed under the jurisdiction of the Union, irrespective of the firm by which such Apprentice was previously employed.

The number of Apprentices employed by the Company shall at no time exceed (1) Apprentice for each six (6) other employees covered by the terms of this Agreement, exclusive of "Shop Helpers".

Apprentices shall be obliged to attend classes stipulated and approved under the Apprenticeship Program for four (4) hours, once each week during regular working hours and accordingly, shall be given time off for such purpose. Any apprentice who refuses or fails to attend classes under the rules of the Apprenticeship Fund shall be terminated as an Apprentice and shall be subject to discharge or other disciplinary action. No more than twenty-five (25%)

Section 24 continued on page 24-d)

Section 24. (Continued)

per cent of the Apprentices employed by a Company shall attend classes at any one time. In shops that employ under four (4) Apprentices, no more than one (1) Apprentice shall attend class at any one time. Apprentices shall be considered employees of the Apprenticeship Fund during their attendance at the said classes, and while in transit between their shop and the said classes, and shall receive their pay for the four (4) hours lost from work from the Fund, provided they attend said classes.

(H) It is specifically understood and agreed that any conditions of employment or benefits applicable to employees, existing in the Company's plant, which are not specifically provided for in this Agreement and which are more beneficial to the employees than the terms and conditions set forth in this Agreement, shall be continued in full force and effect during the terms of this Agreement, notwithstanding any provision contained in this Agreement to the contrary.

SECTION 25WASH-UP AND REST PERIODS

There shall be ^{TWO} ~~one~~ rest period of ten (10) minutes' duration, which shall be granted during the ~~first half of~~ each shift. Employees who work two (2) or more hours overtime shall be granted a fifteen (15) minutes rest period during the overtime period. During each of the aforementioned rest periods each employee shall be paid the applicable hourly rate, and no work shall be performed during such periods. Y

The last five (5) minutes of each shift shall be designated as a "wash-up period," during which no work shall be performed, and during which each employee shall be paid the applicable hourly rate. CR

SECTION 26WELFARE FUND

(A) Commencing July 1, 1973, the Company will pay seven (7%) per cent of the weekly payroll of all employees who are covered by this collective bargaining agreement employed by the Company, plus three (3¢) cents per hour for each straight time hour of pay paid to each of such employees, and an amount proportionate thereto for each premium hour paid -- e.g., four and one-half (4½¢) cents for each time and one-half hour paid and six (6¢) cents for each double time hour paid, etc., to a Joint Board of Trustees composed of an equal number of representatives from and named by the Union and an equal number of representatives named by Allied Building Metal Industries, Inc. and representing the Companies (each member of the Association) and all other employers with whom the Union has collective bargaining agreements, which money shall be applied by the said Board of Trustees to a Welfare Fund created under an Agreement and Declaration of Trust dated April 4, 1949 presently in existence, and operated as the Iron Workers Local 455 Welfare Fund.

Commencing July 1, 1975, and for the duration of this Agreement, the Company will pay eight (8%) percent of its weekly payroll of all employees covered by this collective bargaining agreement to the said Joint Board of Trustees.

Section 26 (continued)

(B) Under the aforementioned Agreement and Declaration of Trust the Board of Trustees may pay, or may provide for the payment of premiums on such policies of Group Life Insurance, Group Accidental Death and Dismemberment Insurance, Group Accident and Sickness Benefits, Group Hospital, Medical, Surgical, Dental and Related Benefits for all eligible employees, their wives and their children under nineteen (19) years of age, in such manner and amount as the Trustees may determine except, however, that the Trustees shall, out of the Funds in their possession, pay, or provide for the payment of, premiums on policy or policies of Group Insurance for Sickness Benefits, which shall provide disability insurance benefits required to be made and paid under Chapter 600 of the Laws of the State of New York, approved and effective April 13, 1949, together with amendments if any. It is further agreed that this Agreement and the specific provisions for sickness and disability benefits hereunder and such other benefits hereinabove mentioned, as the Trustees may determine shall be in lieu of any obligations imposed upon the Company signatory to this Agreement and/or its employees, for insurance and contributions required or

(Section 26 continued on Page 26-b)

Section 26. (Continued)

provided for in such mentioned Law.

(C) It is further agreed that payment by the Company (including each member of "Allied" and all other firms with whom the Union has collective bargaining agreements) with respect to or required by any Federal, State, or Municipal legislation which may be enacted during the term of the Agreement between the Allied Building Metal Industries and the Union, and which would require the Company to pay or contribute towards the payment of Life Insurance or Health, Hospitalization, or Medical Benefits, shall be credited to the amount required to be paid thereunder, unless the Welfare Plan effective hereunder shall furnish the benefits required by such legislation.

(D) The Company shall make payments in full hereunder not later than the tenth (10th) day of each month following the month in which contributions are due.

SECTION 27PENSION FUND

(A) Commencing July 1, 1973, and continuing through June 30, 1974, the Company will pay eight (8%) per cent to the weekly payroll of all employees who are covered by this collective bargaining agreement employed by the Company plus five (5%) cent per hour for each straight time hour of pay paid to each of such employees, and an amount proportionate thereto for each premium hour paid e.g., seven and one-half (7½) cents for each time and one-half hour paid and ten (10%) cents for each double time hour paid, etc., to a Joint Board of Trustees composed of an equal number of representatives from and named by the Union and an equal number of representatives named by Allied Building Metal Industries, Inc. and representing the Companies (members of the Association) and all other Employers with whom the Union has collective bargaining agreements, which monies shall be applied by said Board of Trustees to a Pension Fund created under an Agreement and Declaration of Trust. Under the said Agreement and Declaration of Trust, the Board of Trustees are to provide for Pension Benefits in such manner and amounts as the Trustees may determine and establish such eligibility rules as they may determine. The plan of benefits adopted by the Trustees has heretofore been approved by the Bureau of Internal Revenue as a qualified plan.

27. (Continued)

Commencing July 1, 1974, and continuing through June 30, 1975, the Company will pay to the said Trustees the sum of ten (10%) per cent of the weekly payroll of all employees who are covered by this collective bargaining agreement employed by the Company, to the said Board of Trustees.

(B) The Company shall make payments in full hereunder not later than the tenth (10th) day of each month following the month in which contributions are due.

SECTION 28SICK LEAVE FUND

(A) Commencing July 1, 1973, and for the duration of this Agreement, the Company will pay two (2%) per cent of the weekly payroll of all employees who are covered by this collective bargaining agreement employed by said Company to a Joint Board of Trustees composed of an equal number of representatives named by the Union and an equal number of representatives named by Allied Building Metal Industries, Inc. representing the Companies (members of the Association) and all other Employers with whom the Union has collective bargaining agreements, which monies shall be applied by said Board of Trustees to a Sick Leave Fund created under an Agreement and Declaration of Trust dated December 3, 1962, presently in existence, and operated as the Iron Workers Local 455 Sick Leave Fund. Under the said Agreement and Declaration of Trust the Board of Trustees is to provide for Sick Leave Benefits in such manner and amount as the Trustees may determine and establish such eligibility rules as they may determine, which Sick Leave Benefits shall not exceed a maximum of five (5) days' sick leave at the prevailing rates of wages during any given year beginning July 1, 1973 and for the period of the duration of this Agreement to eligible participants and shall further provide that in the event an eligible participant during any given year beginning July 1, 1973, and for the period of the duration of this Agreement does not receive any Sick Leave Benefits or any part thereof during any

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28. (Continued)

given year, then such participant, if eligible, shall receive from the said Fund at the end of any year beginning July 1, 1973 and for the period of the duration of this Agreement, a sum of money not to exceed the maximum Sick Leave Benefits declared by the Trustees to be payable to eligible participants during any given year for the period of the duration of this Agreement.

(B) The Company shall make payments in full hereunder not later than the tenth (10th) day of each month following the month in which contributions are due.

SECTION 29APPRENTICESHIP, TRAINING-UPGRADING TRUST FUND

(A) Commencing July 1, 1973, and for the duration of this Agreement, the Company will pay the sum of two (\$.02) cents per hour for each straight time hour of pay paid to each of the employees covered by this Agreement, and an amount proportionate thereto for each premium hour paid -- e.g., three (\$.03) cents for each time and one-half hour paid and four (\$.04) cents for each double time hour paid, etc. to a Joint Board of Trustees composed of an equal number of representatives from and named by the Union and an equal number of representatives named by Allied Building Metal Industries, Inc. and representing the companies (members of the Association) and all other Employers with whom the Union has collective bargaining agreements. The contributions shall be applied by the said Board of Trustees to an apprenticeship, training and upgrading Fund created under an appropriate Agreement and Declaration of Trust and operated as "Local 455 Apprenticeship, Training-Upgrading Trust Fund", and for the organization and administration of the Fund. The Fund, including its plan of benefits and/or programs, shall be established in conformity with all requirements of law and shall be submitted to the Treasury Department for approval as a qualified plan. Effective July 1, 1973, and for the duration of this Agreement, the Joint Board of Trustees of the Fund shall assume all of the duties of the Joint Committee heretofore in existence.

(Section 29 continued on page 29-a)

29. (Continued)

(B) Under the said Agreement and Declaration of Trust, the Joint Board of Trustees is to provide for the operation of programs to train apprentices and to upgrade or improve the skills of employees working under the jurisdiction of the Union for employers who are similarly obligated to contribute to this Fund, in such manner as the Trustees may determine and in accordance with procedures, rules and regulations to effectuate said programs.

(C) The Company shall make payments in full hereunder not later than the tenth (10th) day of each month following the month in which contributions are due.

SECTION 30ANNUITY FUND

(A) Commencing July 1, 1973, the Company will pay one-half (1/2) of one (1%) per cent of the weekly payroll of all employees who are covered by this collective bargaining agreement, employed by the Company, to a Joint Board of Trustees composed of an equal number of representatives from and named by the Union, and an equal number of representatives named by Allied Building Metal Industries, Inc. and representing the companies (members of the Association) and all other Employers with whom the Union has collective bargaining agreements. The contributions shall be applied by the Board of Trustees to an Annuity (Supplemental-Retirement) Fund created under an appropriate Agreement and Declaration of Trust and operated as the "Iron Workers Local 455 Annuity (Supplemental-Retirement) Fund", and for the organization and administration of the Fund.

Commencing Uly 1, 197⁵, the Company will pay two (2%) per cent of its weekly payroll of all employees covered by this collective bargaining agreement to said Joint Board of Trustees.

(B) Under the Agreement and Declaration of Trust establishing the Iron Workers Local 455 Annuity (Supplemental-Retirement) Fund, the Joint Board of Trustees is to provide for annuity and supplemental retirement benefits in such manner and

(Section 30 continued on page 30-a)

Section 30. (Continued)

amounts as the Trustees may determine. The Fund, including its plan of benefits, shall be established in conformity with all requirements of law and shall be submitted to the Treasury Department for approval as a qualified plan, and any change in the plan of benefits adopted by the Trustees shall be subject to approval by the Treasury Department.

(C) The Company shall make payments in full hereunder not later than the tenth (10th) day of each month following the month in which contributions are due.

SECTION 31SEVERANCE PAY

(A) Effective July 1, 1973 when a Company goes out of business (voluntary or involuntary) or moves its plant a distance of 50 miles or more from its then location, or sells its operation, or merges with another company at a location 50 miles or more from its then location, its employees who are terminated as a result thereof shall be entitled to one week's severance pay for each year of service with the Company. Service shall include the employee's total seniority as evidenced by the Company's then seniority rolls. However, no employee shall be entitled to any severance pay unless he has completed 1600 hours of work with the Company involved.

(B) The Company shall be responsible for making the above severance payments. It shall continue to be responsible for the full severance payments unless and until it has made contributions to the Local 455 Severance Pay Trust Fund provided for in Subsection (C) for a period of two (2) years.

(C) Commencing July 1, 1973 and for the duration of this Agreement, the Company will pay 1% of the weekly payroll of all employees who are covered by this collective bargaining agreement employed by the Company, to a Joint Board of Trustees composed of an equal number of representatives from and named by the Union and an equal number of representatives named by Allied Building

(Section 31 continued on page 31-a)

31. (Continued)

Industries, Inc. and representing the companies (members of the Association) and all other Employers with whom the Union has collective bargaining agreements. The contributions shall be applied by the said Board of Trustees to a pooled severance pay fund to be created under an appropriate Agreement and Declaration of Trust to be operated as the "Local 455 Severance Pay Trust Fund," for the purpose of establishing and paying severance pay in accordance with rules and regulations to be adopted by the Trustees, and for the organization and administration of the Fund. The Fund and its rules and regulations shall be established in conformity with all requirements of law and shall be submitted to the Treasury Department for approval as a qualified plan. The above contribution of 13 is the only contribution which the Company is required to make to the Fund.

(D) The Company shall make payments in full hereunder not later than the tenth (10th) day of each month following the month in which contributions are due.

(E) After a company has made contributions to the Fund for a period of two (2) years, the Fund shall be liable to make severance payments where employees are entitled thereto, in an amount which is

(Section 31 continued on page 31-b)

31. (Continued)

equal to the Company's obligation but in no event greater than five (5) times the amount contributed by the Company to the Fund, and the Company shall be responsible to pay the balance of the severance pay due, if any, directly to the employees.

(F) The Trustees will formulate a rule which will modify or alleviate the obligations of a Company to continue payments to the Fund where in the opinion of the Trustees, the Company has made contributions to the Fund sufficient to secure its employees severance pay.

(G) A rule will be formulated covering the severance rights of employees who are eligible to apply for full pension benefits.

SECTION 32TRUST FUND PROTECTION

(A) The Company shall furnish the Trustees of the Local 455 Welfare Fund, the Trustees of the Pension Fund for Iron Workers Local 455, the Trustees of the Iron Workers Local 455 Sick Leave Fund, the Trustees of the Local 455 Industry Vacation Trust Fund, the Trustees of the Local 455 Apprenticeship, Training-Upgrading Trust Fund, the Trustees of the Iron Workers Local 455 Annuity (Supplemental-Retirement) Fund and the Trustees of the Local 455 Severance Pay Trust Fund, provided for in Sections 26, 27, 28, 16, 29, 30 and 31 respectively, of this Agreement with all records pertaining to the names, job classifications, social security numbers and wage information for all employees covered by this Agreement, together with such other information as may be required for the proper and efficient administration of each of the said Funds.

(B) The Company agrees to make available to the accountant for each of the aforesaid Funds any and all records which, in the discretion of the Trustees of said Funds or any one Fund, may be required to determine whether the Company has made the contributions or has made the proper contributions it is obligated to make pursuant to this Agreement.

(Section 32 continued on page 32-a)

Section 32. (Continued)

(C) Failure of the Company to make payments in full by the tenth (10th) day of each month following the month in which the contributions are due to any of the aforesaid Funds, as specified in Sections 26, 27, 28, 16, 29, 30 and 31 of this Agreement, shall constitute a breach of this Agreement and, upon ten (10) days' written notice to the Company, the Union, notwithstanding anything to the contrary contained in this Agreement, shall have the right at any time or times thereafter to strike and remove its members from the plant of such Company until the Company pays the full amount of all moneys then due the Fund(s) involved and also pays the employees who are on strike their regular rate of pay for all time lost during any such strike. Once a Company has received such a ten (10) day notice, the right of the Union to withdraw its members without loss of pay continues for all subsequent delinquency without requiring that any further notice be given. Any Company which becomes delinquent with payments, as hereinabove provided, shall be required to post bond to secure future payments of such Company to the Funds.

(D) In the event a dispute arises in connection with failure of the Company to make the required payments to any of the Funds, as provided for in this Section, and in the event request is made by the Union that such dispute be submitted to arbitration, the dispute shall be submitted, to Jerome J. Lande, 292 Madison

(Section 32 continued on page 32-b)

Section 32. (Continued)

Avenue, New York, N.Y. 10017, for determination and decision, instead of to the American Arbitration Association, notwithstanding the provisions of Section 10 of this Agreement. If for any reason Jerome J. Lande is incapacitated or for any other reason unable to act, the Trustees of the Funds shall select a substitute arbitrator. The decision rendered by the designated arbitrator shall be final and binding on the Company and the Union. Should such decision sustain the Union's position, such decision shall contain a directive that the Company pay all collection expenses, including reasonable attorney fees, arbitration costs, and Court costs and other costs, if any, and in addition thereto, interest in the sum of seven and one-half (7-1/2%) per cent of the payments due to said Funds, which amount shall be paid to the Trustees of said Funds.

(E) Resort to a remedy under this Agreement or under the Agreements and Declarations of Trust for the collection of contributions due the Funds or any one Fund, shall not be deemed a waiver of the right to resort to any other remedy provided therein or by law. Resort to one remedy at one time shall not be deemed a waiver of the right to resort to others at a future or subsequent time.

SECTION 33TERMINATION

This agreement shall become effective as of the _____ day of _____, 19____ and shall remain in full force and effect until midnight June 30, 19____; and unless written notice of a desire for change therein or to terminate the same be given by either party to the other at least sixty (60) days and not more than ninety (90) days prior to such expiration date, it shall continue in effect for an additional year thereafter. In the same manner, this agreement shall remain in effect from year to year thereafter, subject, however, to the right of each party to terminate it at the expiration of any such year by giving notice, in writing, to the other party at least sixty (60) days and not more than ninety (90) days prior to the expiration of such year. Should notice of termination be served, or notice of a desire for change therein be served by either party, it is agreed that a conference shall be held on the first Tuesday in May of the year such notice is served, unless some other date is mutually agreed upon.

(Section 33 continued on page 33-a)

Section 33. (Continued)

IN WITNESS WHEREOF, the parties hereto have hereunto set their
hands and seals this _____ day of _____
19 ____, in the City of New York.

SHOPMEN'S LOCAL UNION NO. 455

(Name of Company)By _____
PresidentBy _____
(Person authorized to sign)By _____
Recording Secretary

APPROVED AS TO FORM:

INTERNATIONAL ASSOCIATION OF BRIDGE,
STRUCTURAL AND ORNAMENTAL IRON WORKERSBy _____
(Official authorized to sign)_____
(Title)

F.C. 10-13
S.C. For 10
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EXHIBIT 10(b) - SHOPMEN'S LOCAL UNION NO. 455's PROPOSED
AGREEMENT FOR 1975-1976 (pp. 405a-432a)

PROPOSED AGREEMENT

between

SHOPMEN'S LOCAL UNION NO. 455

of the

INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL

AND ORNAMENTAL IRON WORKERS (AFL-CIO)

and

Name of Company or Employer Association

City

State

July 1, 1975
Effective Date

THE UNION'S PROPOSED NEW AGREEMENT TO BE NEGOTIATED
WITH THE ABOVE-MENTIONED FIRM CONSISTS OF ALL OF THE
PROVISIONS OF THE CURRENT AGREEMENT, WHICH CONTAINS
EXPIRATION DATE OF June 30, 1975, EXCEPT THE
PROVISIONS OF THOSE SECTIONS OR SUBSECTIONS WHICH THE
UNION PROPOSES TO BE REPLACED BY THE PROVISIONS OF THE
SECTIONS OR SUBSECTIONS WHICH ARE ATTACHED HERETO.

SECTION 4. UNION SECURITY

Subsection (A) - no change

Subsection (B) - no change

The Union proposes that Subsection (C) be changed to read as follows: (the change is underlined)

"(C) The Company agrees that in the event that it requires additional employees in the classifications covered by this agreement, it shall immediately advise the Shop Steward of the Company's needs. It shall then call the employment office operated by the Union for the purpose of hiring the required employees. In the event that said employment office is unable to supply help satisfactory to the Company "

(Balance of Subsection to remain as is).

SECTION 6. HOURS OF WORK

407a

"Seven and one-half (7 1/2) consecutive hours, exclusive of the lunch period shall constitute a basic work day, and five (5) days, Monday through Friday (not to exceed 37 1/2 hours work), shall constitute a basic work week for the first shift.

"In the second and third shifts, if any, the basic work day shall consist of six and one-half (6 1/2) consecutive hours, exclusive of the lunch period, with pay for seven and one-half (7 1/2) hours; and five (5) such basic six and one-half (6 1/2) hour days, Monday through Friday (not to exceed thirty-two and one-half (32 1/2) hours shall constitute a basic work week for such shifts.

"The regular starting time and quitting time of the various shifts, as herein provided for, may be changed from time to time by mutual agreement between the Company and the Union."

[Third paragraph of present contract eliminated]

SECTION 7. OVERTIME PAY

408a

"(A) All work done by an employee before or after the regular work hours of any shift (i.e.) (7 1/2) hours for the first shift and (6 1/2) hours for all other shifts), or of the regular work week, shall be paid for at overtime rates as hereinafter provided.

"(B) Overtime pay shall be computed as follows:
Overtime rates for work performed Monday through Friday shall be paid for at the rate of double-time. No work shall be performed Friday beyond the hours regularly worked on Fridays, except the loading and unloading of trucks, and in cases of emergencies.

"(C) All work performed on Saturday and Sunday shall be paid for at the rate of double-time, it being understood that no work shall be performed on Saturdays, or Sundays, except as provided in Sub-section (E) below.

"(D) All work done on any recognized holiday, or day observed as such, as provided in Section 8 of this agreement, shall be paid for at three (3) times the employee's current regular straight-time hourly rate. However, employees assigned to the third shift for the day preceding such holiday, or day observed as such, shall complete such shift on the morning of such holiday at the rate applicable for the preceding day.

"(E) No work shall be performed on Saturdays, Sundays, or any recognized holidays, or days observed

as such, unless and until an official representative of the Union is notified verbally and confirmed in writing by a representative of the Company. Such notification shall specify the names of all employees who are scheduled to work on such Saturday, Sunday or holiday or day observed as such. Should the Company fail to provide such notification, the Company shall contribute to the Union's Sick and Disabled Fund an amount equal to a full day's pay for each employee who worked on such Saturday, Sunday or holiday, or day observed as such.

"(F) When employees who have acquired three (3) months or more of seniority are on layoff, no overtime work shall be performed (except in cases of extreme emergency) which is covered by the classification in which such laid-off employee is classified.

"(G) There shall be no discrimination in the assignment of overtime work; and overtime work shall, insofar as practical, be allocated equitably among the employees classified in the classification covering the work operation which is to be performed on an overtime basis. However, the shop steward shall be one of the employees assigned to overtime work.

"(H) When overtime work is to be performed, employees designated to perform such overtime work shall be given notice thereof no later than the end of the lunch break.

"(I) There shall be no discipline imposed on any employee for his refusal to work overtime."

SECTION 8. HOLIDAYS

410a

"(A) For the purpose of this agreement, New Year's Day, Martin Luther King's Birthday, Lincoln's Birthday, Washington's Birthday, Good Friday, Decoration Day, Fourth of July, Labor Day, Veteran's Day, Election Day, Thanksgiving Day, the day following Thanksgiving Day, the last working day before Christmas, Christmas Day and the last working day before New Year's Day or days observed as such, shall be recognized as holidays. Should any of the foregoing holidays occur on Sunday, the following Monday instead of such Sunday shall be recognized and observed as the holiday in question. No work of any description shall be performed on Labor Day, except in case of extreme emergency.

"(B) The above holidays observed as such, shall be paid holidays and employees shall receive a full day's pay therefor when no work is performed on any of all such days, regardless of the day of the week upon which such holiday occurs, including a holiday that occurs or is observed on Saturday, holidays that occur during the vacation period of any employee shall be paid for in addition to vacation pay.

"(C) In order for an employee to be eligible to receive the day's pay when no work is performed on any of the holidays, specified in subsection (A) above, or days observed as such, he must have performed work for the Company during the scheduled work week in which the holiday occurs or is observed, unless failure to perform work during such week was because of being on paid vacation, as hereinafter provided for in this agreement, or because

SECTION 8. (continued)

of confirmed illness or injury that occurred or commenced during the sixty (60) days immediately preceding the holiday in question, or because of layoff by the Company that commenced during the fifteen (15) days immediately preceding the holiday in question, or for such other absence as shall have been authorized, directed or approved by the Company. New employees hired during the work week in which a holiday occurs, shall not be entitled to pay for such holiday when no work is performed on such day by such employee, unless such employee performs work on a regular work day in the said work week prior to the occurrence of the holiday in question."

SECTION 9. REPORTING PAY and/or ALLOWED PAY

"(A) Any employee able and willing to work, who is ordered to report to work by an authorized Representative of the Company and who is not put to work, or who shall have appeared for work on a regular work day without previously having been informed by an authorized Representative of the Company not to report and any employee commencing work on any scheduled work day shall be paid a full day's pay at the applicable rate for such day.

~~"(B) Any employee, other than a probationary employee who commences work on a regular work day and who does not complete a full week's work through no fault of his own, shall receive in addition to pay for hours actually worked, or eligible for, the difference between those hours and a full week's pay.~~

"(C) Any person who is sent by the Union to the Company's shop, in response to a request made by an authorized Representative of the Company, shall, if able and willing to work and is not put to work, be paid one-half day's pay at the applicable rate for the work operation such person would have otherwise been assigned to, if such plant is in production.

~~"(D) Any employee injured at the Company's plant, who is sent to a doctor and returns to work during his or her regular working hours the same day, shall be paid by the Company the applicable wage rate for such time thereby lost on such day by such employee; and if he or she shall, on any subsequent day on which he or she performs work for the Company, go to the doctor~~

SECTION 9. (continued)

413a

for treatment of such injury during his or her regular working hours or called to attend a compensation hearing in such case, he or she shall be paid by the Company the applicable wage rate for such time thereby lost on such day by such employee, but in no event for more than two (2) hearings on any one injury. Should an injured employee be admitted to a hospital or be instructed by the Company or the doctor to refrain from working, such injured employee shall suffer no loss of pay for the period the employee is unable to work."

SECTION 13. SENIORITY

"(A) Employees shall be regarded as probationary employees until they have worked for the Company within the bargaining unit described and set forth in Section 1 of this agreement for a period of thirty (30) days, and may be relieved from employment if they fail to meet the requirements of the job during this trial or probationary period. However, if such employee has had five (5) or more years of service in the industry, his probationary or trial period shall be limited to the first week of his employment by the Company. Employees continued in service of the Company after the trial or probationary period set forth above, shall have a seniority status in their classification in accordance with their length of continuous service from the date of hiring. No employee shall be laid off except for lack of work. Layoffs due to lack of work, illness of the employee, or for other causes not due to the voluntary act or fault of the employee shall not constitute interruptions of continuous service as those terms are used in this Section; and the employee's seniority status shall not be affected by such interruptions; provided, however, the continuous service of an employee and his or her seniority status based thereon shall be terminated for the following reasons:

- (1) Discharge for proper cause.
- (2) If he or she resigns or quits.
- (3) When an employee in question has

performed no work for a period of 18 consecutive months; or an employee with five ⁴⁵10 or more years of service has not performed any work for a period of 36 consecutive months.

This section shall not apply to men who were out of work due to injuries or illness.

"(B) An employee may be disciplined for

(1) Absence from work for three (3) consecutive days without notifying the Company of the reasons for absence unless the employee can prove his or her failure to give such notice was due to circumstances beyond his or her control.

(2) Failure to report for work and return to work when laid-off, within seven (7) work days after being notified by certified mail, requesting him or her to do so, except if the recall is for work on a temporary basis, or if the employee has other good and reasonable cause for refusal to return at the time called, in either of which events, the employee may refuse the recall for work, without effecting his seniority status. Any employee who is laid-off shall keep the Company advised, in writing, of his or her current address, and the Company shall notify such employee by certified mail addressed to such address, when an opening is available for him or her in line with his or her seniority status. Such notice shall specify the date and hour to report for work. A copy of such notice shall be given to the Shop Steward within twenty-four (24) hours after same is mailed or sent. Upon receipt of such written notice the employee will notify the Company whether or not he or she will report for work at the time requested.

(3) Failure of an employee to report to work and return to work following the conclusion of an approved leave of absence, as provided for in this agreement."

[Balance of Section as present contract.]

SECTION 14. LEAVES OF ABSENCE

(A) Same as present contract.

(B) Same as present contract

(C) Same as present contract

(D) Employees shall be granted three (3) days' paid leave in case of death in the employee's immediate family. The immediate family is defined to cover the employee's spouse, parents of the employee and spouse, grandparents of the employee and spouse, blood brothers and sisters of the employee and spouse, children of the employee or spouse, and grandchildren of the employee or spouse. Proof shall be submitted if required.

(E) Employees shall suffer no loss in pay as a result of jury service. The Company shall, upon proof of such service, pay the employee the difference between his regular pay and the jury fee earned.

(F) The Company will grant employees' time off without loss of pay, for the donation of blood at any hospital or blood donation center.

SECTION 16. VACATIONS

"(A) Employees shall be entitled to the following vacation benefits with pay therefor:

One (1) year but less than two (2) years continuous service in the industry shall receive one (1) week's vacation.

Two (2) years but less than five (5) years continuous service in the industry shall receive two (2) weeks' vacation.

Five (5) years but less than (10) years continuous service in the industry shall receive three (3) weeks' vacation.

Ten (10) years but less than fifteen (15) years continuous service in the industry shall receive four (4) weeks' vacation.

Fifteen (15) years but less than twenty (20) years continuous service in the industry shall receive five (5) weeks' vacation.

Twenty (20) or more years continuous service in the industry shall receive six (6) weeks' vacation.

"(B) Employees should be entitled to receive 110% of their regular pay for their vacation period.

"(C) A vacation schedule shall be posted in the plant not later than April 15th of each year, and a vacation period shall be designated between June 1st and Labor Day except that employees with children under 18 years of age shall not be obliged to take their

SECTION 16. (continued)

vacation in June and such employees who do not desire a June vacation shall immediately notify the Company if they are scheduled for such a vacation whereupon they shall be assigned a new vacation in accordance with past practice in the Company. On request of an employee and consent of the Company and Union other period or periods may be selected; such request shall not be denied except for good cause.

(D) Employees shall receive their vacation moneys from the Local 455 Industry Vacation Fund provided for in subdivision (E) below. The Company shall not be responsible for vacation payments other than the stated contributions to the Vacation Fund, except where in any one year there are insufficient moneys in the Trust Fund to pay the vacation moneys in full to all the employees according to their entitlement. In such event, the Trustees of the Vacation Fund shall at a reasonable time prior to the vacation period notify the Employers of any additional contribution required and the Companies shall be obliged to make such additional contribution by the beginning of the vacation period designated herein. Such additional contribution shall be used only for the particular vacation period following the notice.

(E) (1) Effective July 1, 1975, the Company shall contribute _____ percent of the weekly payroll of all employees who are covered by this collective agreement, employed by the Company, to a Joint Board of representatives from and named by the Union and an equal number of

SECTION 16. (continued)

representatives named by all Employers with whom the Union has collective bargaining agreements. The Employer Trustees shall be designated by a referendum among all Employers conducted under the auspices of the American Arbitration Association. The contributions shall be applied by the said Board of Trustees to an industry vacation fund created under an appropriate Agreement and Declaration of Trust to be operated as the "Local 455 Industry Vacation Trust Fund" for the purpose of establishing and paying for pooled vacation benefits, in accordance with a Vacation Plan and rules and regulations therefor to be adopted by the Trustees, and for the organization and administration of the Fund. The Fund, including its plan of benefits, shall be established in conformity with all requirements of law and shall be submitted to the Treasury Department for approval as a qualified plan.

(2) Under the said Agreement and Declaration of Trust, the Joint Board of Trustees shall provide vacation benefits and establish rules and regulations consistent with this agreement and existent benefits and conditions.

(3) Payments to the Trustees of said Local 455 Industry Vacation Trust Fund provided for in this subsection shall be made monthly and shall be paid in full by the Company not later than the tenth of each month following the month for which such payments are applicable, except when weekly payments are directed pursuant to Section 32.

SECTION 16. (continued)

(F) Employees who are entitled to one or more
weeks vacation shall be obliged to take their vacation
time.

SECTION 18. SAFETY AND HEALTH

(A) Same as present contract.

(B) Welding shield, goggles, gloves, and equipment which an employee would not normally be required to acquire shall be provided by the Company. The Company shall supply employees with work uniforms and a change of the same. It is understood that the Company will also cover the full cost of at least one pair of standard safety shoes a year to all active employees with three months or more of seniority. The Company shall also furnish employees, when necessary, such protective clothing as is necessary because of inclement weather.

(C) Same as present contract.

(D) Same as present contract.

(E) Employees shall be allowed one-half day off, twice each year, with no loss in pay, in order to attend an Industry Safety and Occupational Health Conference.

(F) The Company agrees to abide by the Rules and Regulations of OSHA (Occupational Safety and Health Act of 1970).

(G) An Industry Safety Committee shall be established consisting of representatives of the Union and of the Employers in the industry (including the Companies) for the purpose of promulgating safety and health rules for the industry.

SECTION 20. SUBLETTING OF WORK

(A) Same as in present contract.

(B) Same as in p^resent contract.

(C) If the Company violates (A) or (B) above, the Union shall have the right, notwithstanding anything to the contrary herein contained, on five (5) days' written notice to the Company, to remove its members from the plant of the Company until it cures the said violation and pays the employees who are on strike their regular rate of pay for all time lost during such strike.

SECTION 24. WAGE RATES AND CLASSIFICATIONS

The following are the changes in the present Section 24:

(B), (C), (D), (E), and (G).

—Effective July 1, 1975 a substantial increase in wages and minimum rates of pay shall be granted.

In addition, cost of living increases shall be made in the employees' hourly rates and in the minimum rates of the contract starting three (3) months from the effective date of the contract, and each three months thereafter, should there be an increase in the cost of living as measured by the Consumer Price Index for Urban Wage Earners and Clerical Workers, New York Metropolitan area; average - all items Series A (1967-100), hereinafter, CPI. The base on which such possible increases shall be measured shall be the CPI figure for the effective date of the agreement. The increases granted to employees shall be in same proportion as the increases registered in the CPI.

(E) Truck drivers, overhead crane operators, and boom operators shall be included in the classification of mechanics.

The following subsections should be added to (G):

A new apprentice shall not be employed so long as: (a) any apprentice previously employed under the jurisdiction of the Union is available for employment, or (b) any mechanic under the jurisdiction of the Union is available for employment, and is registered in

SECTION 24. (continued)

the Union Employment Office. The number of apprentices employed in any shop shall at no time exceed a proportion of one (1) apprentice to each six (6) other employees under the jurisdiction of the Union, exclusive of Shop Helpers.

Apprentices shall receive training credit for periods during which they attend classes under the Apprenticeship-Training program, whether or not they are actively working at the time. They shall also receive credit for up to ninety (90) days of layoff in each year of their apprenticeship.

SECTION 25. WASH-UP AND REST PERIODS

There shall be two rest periods of ten (10 minutes' duration, one which shall be granted during the first half of each shift and the other during the second half of each shift. Employees who work one-half (1/2) hour or more overtime shall be granted a ten (10) minutes rest period during the overtime period. During each of the aforementioned rest periods each employee shall be paid the applicable hourly rate, and no work shall be performed during such periods.

The last five (5) minutes of each shift shall be designated as a "wash-up period", during which no work shall be performed, and during which each employee shall be paid the applicable hourly rate.

SECTIONS 26, 27. 28. 29. 30. and 31. TRUST FUNDS

(A) There shall be an increased contribution by the Companies to each of the Trust Funds.

(B) The representation on each Board of Trustees for each of the Trust Funds shall be composed of an equal number of representatives from and named by the Union and an equal number of representatives from and named by the Employers in the industry, including the members of the Allied Building Metal Industries Inc. and all other Employers which whom the Union has collective bargaining agreements. Said Employer Trustees shall be designated by a referendum among all Employers, conducted under the auspices of the American Arbitration Association.

SECTION 27. PENSION FUND

Add a paragraph (C) which shall read as follows:

"(C) In the event that any Company discontinues operations in the area covered by this agreement, during the term thereof, whether such discontinuance is a result of relocating its plant or selling its operations, merging with another firm, or terminating its operations entirely or for any other reason, so that contributions are no longer made to the Local 455 Pension Fund, the Consultants to the said Fund shall make an actuarial study of the impact, if any, of such discontinuance of operations and the termination of the employees upon the Pension Fund as of the date of the said discontinuance, the cost of which shall be borne jointly by the Company and the Fund. If the Consultants to the Fund determine that the Fund has been adversely affected as a result of such discontinuance of operations by the Company, the Company shall pay to the Fund the sums determined by the Consultants necessary to remedy the adverse effect. The decision of the Consultants shall be final and binding upon the parties.

SECTION 31. SEVERANCE PAY

(E) shall be amended to read as follows:

"After a Company has made contributions to the Fund for a period of two (2) years, the Fund shall be liable to make severance payments where employees are entitled thereto, in an amount which is equal to the Company's obligation, but in no event greater than five (5) times the amount contributed by the Company to the Fund, and the Company shall be responsible to pay the balance of the severance pay due, if any, directly to the employees. In the event the Company does not completely discontinue operations, but moves its plant, sells its operation or merges with another Company, and its employees are terminated as a result thereof, the Fund shall have a right to reimbursement from such Company for all severance payments made by it on account of the action of the Company.

Add a paragraph (H) which reads:

"(H) Any Company which determines to go out of business, or to move its plant or sell its operations, or merge its operation as described in subdivision (A) shall promptly advise the Union of such determination, or be liable for any damages consequent upon its failure to so advise the Union.

SECTION 32. TRUST FUND PROTECTION

(A) Same as present contract.

(B) Same as present contract.

(C) Same as present contract.

(D) In the event a dispute arises in connection with failure of the Company to make the required payment to any of the Funds, as provided for in this Section, and in the event request is made by the Union that such dispute be submitted to arbitration, the dispute shall be submitted to Nathan Cohen, Esq., 8 Central Park Road, Plainview, New York 11803, for determination and decision, instead of to the American Arbitration Association, notwithstanding the provisions of Section 10 of this Agreement. If for any reason Nathan Cohen is incapacitated or for any other reason unable to act, the Trustees of the Funds shall select a substitute arbitrator. The decision rendered by the designated arbitrator shall be final and binding on the Company and the Union. Should such decision sustain the Union's position, such decision shall contain a directive that the Company pay all collection expenses, including reasonable attorney fees, arbitration costs and Court costs and other costs, if any, and in addition thereto, interest in the sum of seven and one-half (7 1/2%) percent of the payments due to said Funds, which amount shall be paid to the Trustees of said Funds. Where a Company fails to make contributions owed by it to the Funds, for a second time, the Union may demand and the Company must comply with the demand that for the balance of the contract period, such Employer submit weekly reports and make

Section 32. (continued)

weekly contributions to the Funds, rather than the
monthly reports and payments hereinabove provided.

(E) Same as present contract.

SECTION 33. MOVE OR MERGER BY COMPANIES

Any Company which during the period of this contract either moves its operations out of the area so that it is no longer subject to the Union's jurisdiction, or merges its operations with another establishment, out of the Union's jurisdiction, but continues after such move, or merger to fabricate ferrous or non-ferrous metals, shall in addition to all its obligations under the contract pay its employees damages suffered by them as a result of such move or merger, in an amount equal to the sum of the fringe benefits which such employees would have received during the term of this agreement.

SECTION 34. DURATION OF CONTRACT

July 1, 1975 to June 30, 1976.

EXHIBIT 10(c) - SHOPMEN'S LOCAL UNION NO. 455's
STIPULATION EXTENDING CONTRACT

G.C. 433a

IT IS HEREBY STIPULATED AND AGREED by and between

_____ presently located at _____
_____ (hereinafter "Company") and

SHOPMEN'S LOCAL UNION NO. 455, presently located at 853 Broadway,
New York, New York (hereinafter "Union") that the parties

contract effective July 1, 1973 be extended to
6/30/76, with the following modifications

and/or additions:

SECTION 4: Union proposal-Sub-Section "C".

SECTION 8: One additional holiday _____

SECTION 9: Union proposal sub-Section "A" to replace Sub-Section "A"
& "B" of Standard Independent contract (S.I.C.) Union
proposal Subsection "C".

SECTION 13: Union Proposal except as below -
"A" starting at 7th line --(However if such ----first
week of his employment by the Company") shall be deleted.
A-3 change five to ten and thirty-six (36) to twenty-
four (24).

SECTION 16: "A" Present benefit program except that "three weeks for
eight years shall be changed to three weeks for seven
years".

Union Proposal Subsection "R".

Union Proposal Subsection "D".

Union Proposal Subsection "E"(increased contributions as
referred to below.)

SECTION 18: Subsection "B" changed "re" Safety Shoes ----the Company
will also cover the cost of one pair of standard safety
shoes a year (up to twenty-four dollars) to all -----
Union proposal Subsection "F".

SECTION 24: A fourteen (14) percent increase re: the classification
rate, effective July 1, 1975 as follows:
Ten (10) percent "re" wages of minimum rates for all
employees-Foreman & Finisher .75, Mechanic .65, Laborers
.55. per hour. Four (4) percent 30% to be contributed
(in addition to the present contributions) to the Annuity
Fund for all employees. (Contract rates of all classi-
fications to be adjusted accordingly) "E"-Truck drivers
included in mechanics classification. Union proposal
(Section 24) re: Training credit for apprentices. The
last paragraph of proposal.

TRUST FUNDS: Section 26, 27, 28, 29, 30, 31.

Union proposal except add Section 16, and add to end of
1st sentence Trust Fund as negotiated in the Allied and
Standard Independent contracts.

SECTION 32: Union Proposal.

SECTION 33: July 1, 1975 to June 30, 1976 (If a longer term contract
is negotiated in the industry then the parties shall adopt
and accept the changes made for the period after the
first 1st year as outlined above.)

DATED:

COMPANY _____

BY _____

SHOPMEN'S LOCAL 455 BY _____

CITY OF NEW YORK

Part ARI, County of KINGS

CERTIFICATE OF DISPOSITION

No 244484

Docket No. K 604148 1976

THE PEOPLE OF THE STATE OF NEW YORK

vs.

JERRY MEISNER 43
 NAME AGE
1805 215TH ST. APT.#3B
 ADDRESS
BAYSIDE, QUEENS N.Y.
 CITY STATE
165.40, 155.25 P.L.
 OFFENSE 73
BET SEPT/OCT. 74
 DATE OF OFFENSE
P.G. TO 155.25 P.L.
 DISPOSITION
CONDITIONAL DISCHARGE

1-28-76
 DATE OF DISPOSITION
ARI KINGS
 CRIMINAL COURT PART COUNTY

RICHARD A. BROWN
 JUDGE
HOWARD EDLMAN ALTY FOR
NATIONAL LABOR RELATIONS BOARD
 I hereby certify that this is a true excerpt of the record
 on file in this Court.

DATE 3-25-76 1976

E. Burch, C.C.C.
 COURT OFFICIAL (Signature) Title

EXHIBIT 13(b) - CERTIFICATE OF DISPOSITION ON JERRY MEISNER

CRIMINAL COURT OF THE
CITY OF NEW YORK

Part: ARI County of KINGS

CERTIFICATE OF DISPOSITION

No 244485

Docket No. K 604149 1976

THE PEOPLE OF THE STATE OF NEW YORK

vs.

SEYMOUR ERNEY 36
NAME AGE

11 SIMPSON DRIVE
ADDRESS

OLD BETHPAGE, L.I. N.Y.
CITY STATE

165.40, 155.25 PL.
OFFENSE

BET. SEPT 13/OCT 74
DATE OF OFFENSE

PG. TO 155.25 PL.
DISPOSITION

CONDITIONAL DISCHARGE

1-28-76
DATE OF DISPOSITION

ARI KINGS
CRIMINAL COURT PART COUNTY

RICHARD A. BROWN
JUDGE

HOWARD EDELMAN, ATTY FOR
NATIONAL LABOR RELATIONS BOARD

I hereby certify that this is a true excerpt of the record on file in this Court

DATE 3-25-76 1976

E. Burch A.C.C.
COURT OFFICIAL (Signature) Title

EXHIBIT 13(a) - CERTIFICATE OF DISPOSITION ON SEYMOUR ERNEY

434a

EXHIBIT 13(c) AFFIDAVIT RELATING TO POLICE INVESTIGATION
THE PEOPLE OF THE STATE OF NEW YORK
VS.

435a

PETIT LARCENY
UNAUTHORIZED USE OF VEHICLE
POSSESSION OF STOLEN PROPERTY

1. Jerry Meisner M43
2. Seymour Erney M36
3.
4.
DEFENDANTS

STATE OF NEW YORK
Kings

KINGS COUNTY OF

SS.:

PO Henry Pascone 21979 of District Atty's office Kings NY
Address County State

being duly sworn, deposes and says that on bet Sept/Oct 74 at about
at 92744 Metropolitan Ave. (Iron Works) Kings, State of New York,
Address County

the defendant committed the offenses of:

XXXX. POSSESSION OF BURGLAR'S TOOLS (Section 140.35 Penal Law), in that said defendant possessed a tool, instrument, and other article adapted, designed, and commonly used for committing and facilitating offenses involving forcible entry into premises, and offenses involving larceny by a physical taking, and offenses involving theft of services, under circumstances evincing an intent to use and knowledge that some person intended to use the same in the commission of an offense of such character;

XXXX. PETIT LARCENY (Section 155.25 Penal Law), in that said defendant did steal property;

XXXX. UNAUTHORIZED USE OF VEHICLE (Section 165.05 Penal Law), in that said defendant, knowing that he did not have the consent of the owner, took, operated, exercised control over, rode in, and otherwise used a vehicle;

XXXX. CRIMINAL POSSESSION OF STOLEN PROPERTY IN THE THIRD DEGREE (Section 165.40 Penal Law), in that said defendant knowingly possessed stolen property with intent to benefit himself and a person other than the owner thereof and to impede the recovery of such property by an owner thereof;

under the following circumstances: Deponent states that pursuant to an official A.D.A. Rudolph Smith of investigation conducted by Kings County D.A.'s office and information supplied by Mildred Gurian of 281 Arkansas Drive, Bklyn., NY, that at various times and date at the above noted location, the defendants acting in concert did take various quantities of steel belonging to GLG Iron Works Co. and did sell said steel receiving various amounts of USC in exchange for said property. The investigation further disclosed that the defendants did not account for the proceeds of the sale of steel to their employer GLG Iron Works Co. Inc. and that the defendants did not have permission or authority to take, use or possess or sell said property, nor appropriate the proceeds of said sale to their personal use.

BEST COPY AVAILABLE

Sworn to before me 28 Jan. 19 76

Deponent

[X] MISDEMEANOR COMPLAINT
[] MISDEMEANOR INFORMATION

EXHIBIT 14(a) SECTION 165.40 OF THE PENAL LAW OF THE STATE OF NEW YORK

§ 165.35

PENAL LAW

Part 3

Part 3

THEFT

§ 165.35

Fortune telling

Note

A person is guilty of fortune telling when, for a fee or compensation which he directly or indirectly solicits or receives, he claims or pretends to tell fortunes, or holds himself out as being able, by claimed or pretended use of occult powers, to answer questions or give advice on personal matters or to exorcise, influence or affect evil spirits or curses; except that this section does not apply to a person who engages in the aforescribed conduct as part of a show or exhibition solely for the purpose of entertainment or amusement.

Fortune telling is a class B misdemeanor.

L.1965, c. 1030.

Practice Commentaries

by Arnold D. Hechtman

This section substantially restates a former provision of the Code of Criminal Procedure penalizing "fortune tellers" as "disorderly persons" (§ 899[3]). (The entire "disorderly persons" section, proscribing several kinds of conduct as constituting a non-criminal "offense," was repealed at the 1967 legislative session, such repeal becoming effective as of September 1, 1967.)

"Fortune telling" is a cousin of "jostling" (§ 165.25) and "fraudulent accosting" (§ 165.30). Realistically speaking, it is frequently an inchoate theft offense involving a prevalent species of fraud whereby its practitioners, professing occult powers of prognostication, annually bilk a gullible public of many millions of dollars. Consequently, although many fortune tellers and tea leaf readers may not fall within this thievery category, the offense is included in the instant "theft" Article, being graded a class B misdemeanor.

Cross References

Larceny, see section 155.00 et seq.

§ 165.40

Criminal possession of stolen property in the third degree

A person is guilty of criminal possession of stolen property in the third degree when he knowingly possesses stolen property, with intent to benefit himself or a person other than an owner thereof or to impede the recovery by an owner thereof.

Criminal possession of stolen property in the third degree is a class A misdemeanor.

L.1965, c. 1030.

240

Corroboration 2
Testimony of accomplice 1

1. Testimony of accomplice

Where defendant conspired to participate in automobile with a friend at scene of burglary and the friend, driven accomplice with defendant to friend's house, there was sufficient identification of defendant involved and defendant was apprehended in his automobile with accomplice and stolen goods were eventually covered at place identified by accomplice in his testimony, there was sufficient corroboration of accomplice testimony that defendant was principal in the theft and it was not necessary to directly corroborate testimony of accomplice as to what defendant had said. *People v. Lawl*, 1969, 32 A.D.2d 975, 301 N.Y.S.2d

2. Corroboration

In prosecution for criminally taking and receiving stolen property testimony of three state's witnesses who said that they took typewriter and adding machines from him that they then got defendant

GC #14-A
For id

EXHIBIT 14(b) - SECTION 155.25 OF THE PENAL LAW OF THE STATE OF NEW YORK

AW

Part 3

Numerous Items, total value

See, also, note "Separate larcenies single offense" set out under Notes Decisions to section 155.35.

Whether thefts of numerous small items had a sufficient unity of purpose so that their total value could added to reach the magnitude of grand larceny first (now second) degree was for jury. *People v. Caghi-* 1949, 276 App.Div. 20, 92 N.Y.S.2d 1, modified on other grounds, 301 N.Y. 223, 93 N.E.2d 649, rearrangement did 301 N.Y. 744, 95 N.E.2d 412.

Tickets

Where it was shown that defendant toll taker was 2,153 commutation keys short, and that in lieu of the lost \$1 would have been collected in the passing vehicle, value of property stolen was adequately established. *People v. Mayo*, 1971, 45 A.2d 1037, 358 N.Y.S.2d 58.

Negotiable Instruments

A check has, under the provisions of this section [Penal Law 1909, § 54], a well-defined value of its own for the purpose of description in indictment is not to be regarded the same thing as bills or coin. *People v. Geyer*, 1909, 196 N.Y. 304, N.E. 18.

Where stolen notes have been issued by a corporation, a going concern by authority of its directors, would be valid obligations in the hands of bona fide holders, the prosecution is not called upon to show if the notes had value, as they are deemed to have their face value by one of the provisions of this section [Penal Law 1909, § 1303]. *People v. Big*, 1907, 132 App.Div. 231, 116 N.Y.S. 84, affirmed 197 N.Y. 507, 89 N.E. 1197.

Common law closes in action, where bonds, bills and notes, were "personal goods" and therefore subject to larceny, but by this section [Penal Law 1909, § 1303] negotiable instruments may be the subject of larceny, with their value de-

Part 3

LARCENY

§ 155.25

termined by the face amount of money due thereon. *People v. Pollack*, 1963, 38 Misc.2d 1075, 239 N.Y.S.2d 602.

8. Deeds

A deed to real property may be the subject of larceny under this section [Penal Law 1909, § 1303], and the value of the property transferred is deemed the value of the thing stolen. *People v. Freeman*, 1928, 132 Misc. 551, 239 N.Y.S. 611. See, also, *People v. Peckens*, 1897, 133 N.Y. 576, 47 N.E. 881.

9. Time for determining value

Value of pump had to be determined at precise time of stealing in

order to determine whether its value was over \$100 and would authorize conviction of grand larceny in second degree, and in absence of showing difference in value on date of sale for \$124.00 and five days later when pump was stolen, after two employees attempting to install pump had bent copper tubing, pushed up gauge, and nicked pump in several spots, defendant's conviction of grand larceny in second degree could not be upheld. *People v. Harold*, 1968, 32 N.Y.2d 143, 293 N.Y.S.2d 96, 239 N.E.2d 727.

10. Pleading and proof

See Notes of Decisions under section 155.45.

§ 155.25 Petit larceny

A person is guilty of petit larceny when he steals property.

Petit larceny is a class A misdemeanor.

L.1965, c. 1030.

Historical Note

Derivation. Penal Law 1909, §§ 1296, 1297, 1298, 1299. Section 1296 amended L.1912, c. 164; L.1927, c. 679; L.1964, c. 727, was from Penal Code 1881, § 531. Section 1297 was from Penal Code 1881, § 534, amended L.1892, c. 662, § 17. Sections 1298, 1299 were from Penal Code 1881, §§ 532, 535, respectively.

Practice Commentaries

by Arnold D. Hechtman

This section and the three ensuing ones (§§ 155.30, 155.35, 155.40) present a four degree larceny structure differing materially from the three degree format of the former Penal Law (§§ 1294, 1296, 1298).

Bearing in mind the theory of the Revised Penal Law's ascending (rather than descending) system of presenting degree offenses, petit larceny is, in essence, simply the basic crime of larceny. As such, it embraces any theft of property regardless of its nature or value or of the manner in which it is stolen and regardless of whether the theft also constitutes grand larceny in one or more of its degrees. As with the former Penal Law's crime of petit larceny (§ 1293), however, its principal application is, of course, to larcenous conduct which does not amount to grand larceny.

6 C. 14-B
FOR IS.
S.V.W.
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EXHIBIT 14(c) - SECTION 70.15 OF THE PENAL LAW OF THE STATE
OF NEW YORK

§70.15 Sentences of imprisonment for misdemeanors and
violation

1. Class A misdemeanor. A sentence of imprisonment for a class A misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed one year.

2. Class B misdemeanor. A sentence of imprisonment for a class B misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed three months.

3. Unclassified misdemeanor. A sentence of imprisonment for an unclassified misdemeanor shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall be in accordance with the sentence specified in the law or ordinance that defines the crime.

4. Violation. A sentence of imprisonment for a violation shall be a definite sentence. When such a sentence is imposed the term shall be fixed by the court, and shall not exceed fifteen days.

In the case of a violation defined outside this chapter, if the sentence is expressly specified in the law or ordinance that defines the offense and consists solely of a fine, no term of imprisonment shall be imposed.

L.1965, c.1030.

ADMINISTRATIVE LAW JUDGE'S DECISION DATED SEPTEMBER 2, 1976
 (pp.439a-466a) JD-554-76
 Brooklyn, NY

UNITED STATES OF AMERICA
 BEFORE THE NATIONAL LABOR RELATIONS BOARD
 DIVISION OF JUDGES

EMCO STEEL INC.

and

Case No. 29-CA-4645

LOCAL UNION NO. 455, INTERNATIONAL
 ASSOCIATION OF BRIDGE, STRUCTURAL
 AND ORNAMENTAL IRON WORKERS, AFL-CIO

and

LOCAL 810, INTERNATIONAL BROTHERHOOD OF
 TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
 HELPERS OF AMERICA, 1/

Party in Interest

Howard Edelman, Esq., of Brooklyn, NY,
 for the General Counsel.

Allen Pearl, Esq., of Plainview, NY,
 for the Respondent.

Robert M. Ziskin, Esq. (Mirkin, Barre,
Saltzstein & Gordon, P.C.), of
 Great Neck, NY, for the Party in Interest.

Jerome Tauber, Esq. (Sipser, Weinstock, Harper &
Dorn), of New York, NY, for the Charging Party.

DECISION

Statement of the Case

ROBERT M. SCHWARZBART, Administrative Law Judge: This case was heard in Brooklyn, New York, on March 10, 11, 12, and 29, 1976, on a complaint issued December 5, 1975, 2/ based on charges filed October 21 and November 5 respectively. The complaint alleges that Emco Steel, Inc., herein the Respondent, violated Section 8(a)(1) and (2) of the National Labor Relations Act, as amended, herein the Act, by executing a collective-bargaining agreement with the Teamsters after having voluntarily recognized and bargained

1/ At the hearing the motion of Local 810, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein the Teamsters, to intervene as a necessary party to this proceeding on the basis of its contract with the Respondent Employer was granted.

2/ All dates hereinafter are within 1975 unless stated to be otherwise.

collectively with the Charging Party herein, Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, herein the Iron Workers; violated Section 8(a)(3) and (1) by virtue of the fact that the said contract contained a union security clause; and contravened
5 Section 8(a)(5) and (1) by refusing to continue to recognize and bargain collectively with the Iron Workers.

The Respondent, in its answer, denied that any unfair labor practices have been committed. Counsel for the General Counsel and for the Respondent
10 have filed briefs which have been carefully considered.

Upon the entire record, including my observation of the witnesses, I make the following:

15 Findings of Fact

I. The Business of the Respondent

The Respondent, a New York corporation, is engaged in the manufacture,
20 sale and distribution of iron and steel products. During the past year, which period is representative of its annual operations generally, the Respondent in the course and conduct of its business, purchased and caused to be transported and delivered to its place of business in Brooklyn, New York, steel supplied and other goods and materials valued in excess of \$50,000,
25 of which goods and materials valued in excess of \$50,000 were transported and delivered to it and received from various enterprises located in the State of New York, each of which other enterprises had received said goods and materials in interstate commerce directly from states of the United States other than the state in which it is located.

30 During the past year, which period is representative of its annual operations generally, the Respondent in the course and conduct of its business operations, performed services or caused to be manufactured, sold and distributed at its place of business in Brooklyn, New York, products or
35 services valued in excess of \$50,000, of which products or services valued in excess of \$50,000 were furnished to various business enterprises located in the State of New York, each of which enterprises annually produced goods or performed services valued in excess of \$50,000, which products are shipped directly or which services are performed out of the state where said
40 enterprises are located, or which business enterprises annually purchase supplies valued in excess of \$50,000, which are delivered at their places of business directly from other enterprises located outside the State of New York. In accordance with the foregoing, which was stipulated late in the hearing, 3/ I find that the Respondent is engaged in commerce or in an
45 enterprise affecting commerce within the meaning of Section 2(2), (6) and (7) of the Act.

3/ See General Counsel's Exhibits Nos. 12(a) and (b).

II. The Labor Organizations Involved

Local Union No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL-CIO, the Charging Party, herein, as noted, the Iron Workers, Local 810, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, the Party in Interest, herein the Teamsters, are labor organizations within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. Background

The Respondent, in operation since September, 1974, is engaged in the business of structural steel fabrication. This entails cutting holes into steel beams, girders and columns, cutting the steel to size in accordance with blueprints and generally doing whatever is required to enable the steel to be erected in building construction. The Respondent's employees are principally classified as mechanics, who cut the steel, and laborers. Contracts for the actual erection of steel when obtained by the Respondent are most frequently subcontracted and performed by employees of other employers. Accordingly, the Respondent's employees customarily work within the shop on the Respondent's premises.

The Respondent's principals are Seymour Erney, president, and Gerald Meisner, secretary-treasurer.

B. The Appropriate Unit and the Iron Workers' Majority Status

Paragraph 8 of the complaint alleges that the following unit is appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All production and maintenance employees employed by the Respondent at its Brooklyn, New York, place of business, excluding all office clerical employees, professional employees, guards, watchmen and supervisors, as defined in Section 2(11) of the Act.

Although denying paragraph 8 in its answer, the Respondent concedes that on October 14, it signed a collective-bargaining agreement with the Teamsters whereby it recognized that union as the "sole and exclusive collective-bargaining agent" for a unit including "all employees, exclusive of office clericals, non-working supervisors, watchmen, guards and supervisors as defined in the National Labor Relations Act, as amended," which contract was thereafter applied to the Respondent's production and maintenance or shop employees. Accordingly, except for the unit placement of three individuals employed at the time that the Iron Workers claimed majority status -- Tom McGovern, Dano Coli and John Frick -- there is no substantive dispute between the parties as to the composition of the relevant unit. I,

therefore, find that the unit alleged in the complaint and described above, is appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act.

5 The Iron Workers predicate their majority status upon the support allegedly afforded them by Coli, McGovern and Frick who, on September 15, were the only employees. The Respondent argues that such support was invalid as Coli was a temporary employee and that McGovern as working foreman was a supervisor within the meaning of Section 2(11) of the Act, and, in any
10 event, had declined to sign an authorization card for the Iron Workers. The Respondent further contends that although Frick had signed an authorization card for the Iron Workers, he at the time, did not know what he was signing and thereafter had sought to retrieve his card from the Iron Workers.

15 Dano Coli

 The record reveals that Coli, 4/ a member in good standing of the Iron Workers since 1949, began to work for the Respondent in mid-July.

20 Before this, Coli had been employed by the Brightman Iron Works in Springfield Gardens, New York. However Brightman had been affected by an industry-wide strike called by the Iron Workers, 5/ temporarily shutting down that Company's operations. Although Coli had left his tools at Brightman when the strike began, 6/ he reiterated during his testimony that at no
25 time during his employment by the Respondent from mid-July to about October 3, when he was laid off for economic reasons, did he ever converse with Erney or Meisner, the Respondent's management, with regard to how long he would continue to work for the Respondent. The record is clear that although Coli performed the same welder-mechanic services for the Respondent as he had for
30 Brightman, the Respondent paid him approximately \$40 a week less than he had earned at Brightman's, based on a 40-hour week, with no fringe benefits.

 On the morning of September 15, Anthony Schifano, Iron Workers vice-president and employee of the Union's Apprenticeship Fund, approached
35 Coli and John Frick, apprentice, in the yard of Respondent's premises. Schifano greeted Coli, whom he had known through Coli's long membership in the Iron Workers, and asked who else was employed by the Respondent. Coli

40 4/ Coli had known Erney for approximately 18 years before beginning his employment with the Respondent.

5/ It was stipulated at the hearing that the strike by Local 455, Iron Workers, which affected approximately 160 shops, began on or about July 1, and continued on or about January 9, 1976, when the greater number of
45 employees returned to work. At the time of the hearing certain businesses were still affected by the strike. It was against the background of this strike that the events herein occurred.

6/ Although more than 5 months had elapsed from the time Coli was laid off by the Respondent until the time of the hearing, Coli had not been recalled
50 to work by Brightman and had not collected his tools from Brightman's premises.

told him of Meisner, and Thomas McGovern, both of whom were then Iron Workers' members. Schifano also was informed that Erney, Meisner and McGovern were away and that only Coli and Frick was on the premises. Coli introduced Schifano to Frick who, in answer to Schifano's inquiry stated that he was not a member of the Iron Workers Union. Schifano spoke about the benefits of membership and gave blank authorization cards to the two men. Coli signed his card immediately, but did not date his card or fill in any of the other blanks. 7/

The Respondent's President Erney testified that at the suggestion of his foreman, McGovern, he interviewed Coli for a position with the Respondent. Erney related that during that interview, in July, Coli had asked Erney if he knew that Coli was then on strike. Erney replied that he did. Coli had specified that he was working for Brightman Iron Works and that they could call him back at any time once the strike was over. Erney told him that that was okay as the Respondent only had a small amount of work for him and could put him to work on a temporary basis. According to Erney, Coli then agreed to work for the Respondent on a temporary basis, agreeing to a pay rate substantially below what he had received at Brightman's. No fringe benefits were included. At Coli's request, Erney also agreed to lend Coli the tools he used during his employment with the Respondent, since as noted, Coli's tools had remained on Brightman's premises. Coli's subsequent departure from the Respondent at the time of his layoff on about October 3, was amicable.

Erney's testimony that Coli had not intended to remain permanently with the Respondent was corroborated by McGovern and Frick, both of whom related that Coli had told them of his intention to return to Brightman Iron Works at the conclusion of the strike. 8/

The General Counsel, who contrary to the Respondent, contests McGovern's supervisory status, contends that any communication between Coli and McGovern would not under the law of agency be notice to the Respondent. However, the General Counsel's more basic position is that Coli was not a temporary employee of the Respondent on September 15 when he signed the card as his tenure with the Respondent was not of definite duration.

7/ Schifano, too, denied having dated Coli's card, which was received in evidence with the date, September 15, written on it in the appropriate blank. However, Schifano did fill in other miscellaneous blanks on the card, including the name of the employer, and Coli's job classification in the appropriate blanks on Coli's card. He also wrote Coli's address on the back of the card after Coli had signed it. Schifano then placed it in his pocket together with the signed card received from Frick.

8/ McGovern testified that Coli had told him of his intent to return to Brightman's when Coli first applied for employment with the Respondent. Frick stated that Coli had told him of his intent during Coli's first day of employment with the Respondent.

In his brief, the General Counsel cited M.J. Pirolli & Sons, Inc. ^{9/} and E.H. Sargent and Company, ^{10/} wherein are set forth the relevant test as to whether an employee should be considered "temporary" and therefore excluded from the unit. In the Sargent case, a student was hired in August and quit his employment during the following February. In his employment interview, the student had advised the Company that "he wanted a job in order to earn an enough money to return to school, and that he had every hope of starting school again at the second semester around February 1. . . ." The Board concluded that, "although it is true that [the student] did not intend to remain permanently with the Respondent, it does not appear that his arrangement with [the Respondent] imposed a definite terminal date of his employment. Neither in August nor in October, when he authorized the Union as his bargaining agent, could his expressed 'hope' to return to school in February be equated with any certainty that he would accumulate sufficient funds to accomplish his desire." ^{11/}

In M.J. Pirolli & Sons, supra, which followed the rationale of the Sargent case, the Board included within the unit an employee who had advised the employer when he was hired that he was trying to become a member of the state police force and that he only expected to work for that employer until he got a job with the state police, and also included another employee, who at the time he began to work for that employer, told the hiring official that he would "probably just work until spring and he agreed to that." This was done although the employer in the M.J. Pirolli case had contended that both individuals should be excluded from the unit as temporary employees. It was found that in each instance, the included employees had imposed no definite terminal dates upon their employment. Accordingly, Coli, at the time he signed an authorization card for the Iron Workers, was not a temporary employee as his employment, for the duration of the strike, was of uncertain duration. Coli had not been hired for a set term or to perform a specific project or series of tasks for the Respondent. There were also inherent uncertainties with regard to Coli's chances for future employment with the Brightman Iron Works, including the date when the strike would end and, of course, the time, if ever, when he might be recalled to work there. ^{12/} Coli's decision to leave his tools at Brightman's under the circumstances herein reflected no more than an intent to eventually return to that Company's employ at some unspecified future time. Inasmuch as the absence of these tools under his arrangement with Erney did not prevent Coli from performing such services as the Respondent may have required, that situation in no way made more definite his terminal employment date with the Respondent.

^{9/} 194 NLRB 241, 250.

^{10/} 99 NLRB 1318, 1320.

^{11/} Id. at 1320

^{12/} As matters subsequently developed, the Iron Workers' strike against the industry did not wind down until approximately 4 months after Coli, at Schifano's request, had signed his card. In addition, at the time of the hearing, approximately 2 months after the strike at Brightman's had ended, Coli had still not been recalled.

Accordingly, I find that on September 15, when Coli signed the authorization card 13/ for the Iron Workers, to the time of his layoff in early October, he was a member of the unit found appropriate herein.

5

John Frick

John Frick was employed as an apprentice by the Respondent from mid-summer 1975 until around the beginning of February, 1976, when he was laid off for economic reasons.

10

On September 15, under circumstances described above, when Coli signed an authorization card on behalf of the Iron Workers, so did Frick. However, Frick explained, that at that time he had told Schifano that he was not interested in that Union, he had not read the authorization card before signing it and had merely expected to receive union literature. 14/

15

Frick testified that thereafter on about October 7, he encountered Schifano on the Respondent's premises and had told Schifano that he would like to get his card back from the Iron Workers because he did not want to be a member. Frick explained that his brother-in-law was going into business for himself and Frick did not know whether he would stay with the Respondent. Schifano agreed to return the card, but never did.

20

About 1 week later, on October 14, Frick went to Erney's office and asked to whom he would have to write in order to get his card back from the Iron Workers. Frick related that later, while in the shop, he wrote the following letter to the Iron Workers, dated October 14:

25

This is to confirm our conversation of last week telling you I have no desire to be a member of Local 455 and I would like to have the card I signed returned to me.

30

Thank You

35

Mr. John Frick

Frick did not receive a response to his letter. 15/

40

13/ I do not find significance in any question that may exist as to whether Coli, in fact, had dated his authorization card when signing it, as the Board customarily requires. Coli, long a member of the Iron Workers, had merely reaffirmed his support for that Union. See Harris-Woodson Co., Inc., 77 NLRB 819, 835, fn. 15; Brunswick Meat Packers, 164 NLRB 887, fn. 1, where the Board, in determining majority status, considered existing membership in the Union in lieu of signed authorization cards.

45

14/ Frick, however, stated that, at Schifano's request, he also had written his name and address on the back of the card.

50

15/ Frick could not explain how a photocopy of his October 14 letter to the Iron Workers could be produced by the Respondent as evidence in this proceeding.

Schifano, contrary to Frick, stated that before Frick had signed the card, he had told him its purpose. Frick had further cooperated that day by writing his name and address on the back of the card. Schifano did not testify with respect to Frick's subsequent efforts of October 7 and 14 to recover his authorization card.

From the record as a whole, I credit Schifano's account that on September 15, at the time of signing Frick knew that he was signing an authorization card for the Iron Workers. 16/ Frick had testified that during their employment with the Respondent, he and Coli had been good friends, that he was present and had participated in the September 15 conversation between Coli and Schifano. It therefore is not reasonable to infer that Frick did not know what Coli was doing when he signed the authorization card in Frick's presence. Moreover, it apparently is not Frick's practice to sign documents he has not yet read as he, himself, testified that soon thereafter he had read the entire proposed collective-bargaining agreement between the Respondent and the Teamsters before signing that contract in ratification. It is further noted, that by the time of the hearing, Frick had become obviously hostile toward the Iron Workers. From the foregoing, it would appear to be most improbable that Frick, at the time he signed the Iron Workers authorization card, did not know what he was doing, or that he would have provided his address on the back of that card to a total stranger without first reading the document.

While it is clear that from October 7, Frick actually did begin to seek the return of his Iron Workers card by unwritten and written request, I find that on September 15 and thereafter Frick had indeed designated the Iron Workers to act as his collective-bargaining representative. 17/

Thomas McGovern

Thomas McGovern was hired by the Respondent as working foreman in April. Serving also as a mechanic and finisher, with 30 years of experience in the industry, he was the most highly skilled of the Respondent's shop employees. For many years prior to the hearing and at all times material herein, McGovern was a member in good standing of the Iron Workers and was personally acquainted with Schifano.

16/ The Iron Workers authorization cards signed by Coli and Frick provided, inter alia, that the subscribing employees:

Hereby authorize and designate Shopmen's Local Union No. 455 of the International Association of Bridge, Structural and Ornamental Iron Workers (affiliated with the AFL) to act as my sole and exclusive agent and representative for all purposes of collective bargaining, whether under the operation of the National Labor Relations Act, or otherwise.

17/ As will be discussed below in connection with the Teamsters organizational drive, in agreement with the General Counsel, I find that Frick's (Continued)

Accordingly, although he was not on the Respondent's premises when Schifano obtained signed authorization cards from Coli and Frick, McGovern did accept Schifano's invitation on September 15, to join him that evening at a bar for a couple of drinks. While they were together McGovern refused Schifano's request that he sign an Iron Workers' authorization card, explaining that he was more than satisfied with the salary he was making, was happy working for the Respondent and did not want to spoil it. McGovern noted that he was still a member of the Iron Workers' Union and did not see any reason to sign a card. 18/

The General Counsel, relying upon Harris-Woodson Co., Inc., 19/ and Brunswick Meat Packers, 20/ argues that inasmuch as McGovern had been a member in good standing with the Iron Workers on September 15, his membership constituted stronger evidence of his support for that Union than a mere signature on an authorization card and therefore McGovern could be included as a part of the Iron Workers majority although he had not signed a card.

The Respondent argues, however, that McGovern, at all times material herein, was outside of the unit as a supervisor within the meaning of Section 2(11) of the Act, and that, in any event, under the circumstances described above, he could not be found to have been a supporter of the Iron Workers, while in Respondent's employ.

In seeking to establish McGovern's status as a supervisor, Erney testified that McGovern, from the time of his hire in April, had served as working foreman, in charge of work in the shop.

At the time McGovern was hired, he was given the keys to open and close the plant each day, and told he would have the right to hire, fire and discipline employees, and to assign work. In this connection, it is contended that McGovern successfully recommended the hire of Coli. However, prior to his retention, Coli was also independently interviewed by Erney.

17/ (Continued) efforts to retrieve his card from the Iron Workers coincided with his Respondent-assisted support for the Teamsters and accordingly, will be discounted. See Quality Markets, Inc., 160 NLRB, 44, 45-46. As the card signed by Frick for the Teamsters will be found, infra, to be tainted, the dual card rule recently reiterated in Crest Containers Corporations, 223 NLRB No. 110 (J.D. 5) does not appear to be applicable. Under this rule, where an employee signs an authorization card for each of two, unions the card of neither union will be regarded as a valid designation that may be counted toward majority as it is not possible to tell from the cards which of the unions the employee has selected as an exclusive bargaining agent. However, a tainted card signed by Frick on behalf of the Teamsters at a time when no question concerning representation existed will not suffice to revoke the efficiency of Frick's earlier card on behalf of the Iron Workers.

18/ McGovern and Schifano gave substantially the same accounts of the September 15 meeting.

19/ 77 NLRB 819, 835 fn. 15.

20/ 164 NLRB 887, fn. 1.

Erney also testified that McGovern was responsible for field erection work on which occasions he would direct the Respondent's employees in the placement of steel on various jobsites. McGovern was compensated at the highest hourly rate.

5 Cross-examination revealed, however, that in September, the only persons employed in the shop besides McGovern were Coli and Frick. Coli was an experienced welder and Frick was but an apprentice. In this sense the practical discretion available to McGovern in making work assignments was very limited. Obviously, the jobs requiring skill would necessarily go
10 to Coli and the easier tasks and those which required strength to the younger Frick. In addition, Meisner, who possesses skills comparable to McGovern's was almost always on the premises during working hours. Were McGovern to be found to be a supervisor, the ratio of supervisory personnel to employees would be inordinately high. In addition, the record is clear that McGovern
15 did not independently decide to hire or lay off Frick, Coli or any other shop employee and has never exercised any like authority, such decisions having been made wholly without him. Virtually all field construction work for which the Respondent had contracted was, in turn, subcontracted to other concerns which used their own employees to do the work. Therefore, any
20 responsibility afforded McGovern with respect to field construction work, too, was decidedly limited. Finally, it is noted that the Respondent, contrary to its own contentions, as to McGovern's status already had agreed to include him in the unit covered by the Teamsters' contract by the time of the hearing. Accordingly, McGovern's dues are regularly checked off in
25 accordance with the checkoff provision of the Teamsters agreement and his terms and conditions of employment and benefits conform to those set forth in that contract.

For the foregoing reasons, noting that McGovern's authority to
30 assign work is at most routine in nature, that his one recommendation that an employee be hired was followed only after the Respondent's president had independently interviewed that applicant, the high ratio of supervisory personnel to employees that would exist were McGovern found to be a supervisor and the fact that McGovern has already been included within the unit
35 covered by the collective-bargaining agreement between the Respondent and the Teamsters, I found that McGovern is not a supervisor within the meaning of Section 2(11) of the Act and is properly a member of the unit found appropriate herein. 21/

40 Although, it has been found that McGovern is not a supervisor within the meaning of the Act, there is merit to the Respondent's position that McGovern's longstanding membership in the Iron Workers should not, under the circumstances herein, be considered in determining whether the Iron Workers enjoyed majority support. Although in Harris-Woodson Co., Inc.,
45 supra, and Brunswick Meat Packers, supra, cited by the General Counsel, the Board in the absence of signed authorization cards, accepted the existing union membership of certain employees in the unit as evidence that they had

50 21/ It is noted that on the last day of the hearing, McGovern was the only remaining employee within the above-described unit.

designated the Union to be their bargaining agent, 22/ in those cases, unlike the instant matter, there had been no subsequent expression of sentiment voiced by the relevant employees with respect to representation by their Unions at their current places of employment. In Harris-Woodson, Co., Inc., supra and Brunswick Meat Packers, supra, and other cases that have herein been considered, reliance was placed upon a presumption that employees who have retained their membership in a given union would wish that Union to continue to represent them. However, in those cases, the question of whether the employees were willing to sign new authorization cards never arose and the presumption was never rebutted. Here, however, although McGovern had retained his union membership, he had refused Schifano's specific request that he sign an authorization card for the Iron Workers. Although McGovern did not abandon his Iron Workers membership, he did not seek to extend its representative status to himself or to others in the Respondent's employ.

This refusal, in my view, is sufficient to rebut any presumption which might have arisen from McGovern's membership in the Iron Workers. An individual may have reason to remain in a given union without desiring it as an immediate bargaining representative. As the record reveals, the Iron Workers represent employees in many of the shops engaged in the industry which McGovern is employed and it may be that in the future McGovern might seek to again work in an Iron Workers' shop. In addition, the record also reflects certain other benefits derivable from continuing membership in the Iron Workers. The Iron Workers' collective-bargaining agreement with various employees in the industry, which served as a basis for the alleged collective-bargaining negotiations between the Iron Workers and the Respondent, provides for a series of group insurance and benefit plans covering members, their wives and young children. Although the record does not disclose to what extent, if any, McGovern has continuing rights under such plans, the point is that a desire to retain membership in a given union need not necessarily be synonymous with a desire for immediate continued representation by that Union in a new place of employment. Accordingly, in view of McGovern's refusal to sign an Iron Workers' authorization card on September 15, when requested to do by Schifano, for the reasons given, I find that McGovern, at that time, did not wish to designate the Iron Workers to serve as his collective-bargaining representative and, therefore, do not include McGovern as part of the Iron Workers' majority in the above-described unit. However, as I have found that Coli and Frick did elect to support the Iron Workers on September 15, and that Coli, during his employment, was properly a member of the unit, it is concluded that as of September 15, the Iron Workers enjoyed the majority support of two of the three employees in the unit found herein.

C. The Alleged Refusal to Bargain

1. The Recognition of and Negotiating Sessions with the Iron Workers

Schifano testified that after he had obtained the signed authorization cards from Coli and Frick, as described above, his Union sent a telegram, dated September 17, advising the Respondent that the Iron Workers represented

22/ Also see M.V. Eastern Pacific, 163 NLRB 798, 803-804; United States Gypsum Co., 90 NLRB 964.

an overwhelming majority of its production and maintenance employees and requesting a meeting for the purpose of discussing the terms and conditions of employment.

5 Later that same week, after the telegram had been sent, Schifano, accompanied by Frank Hernandez, Iron Workers' Executive Board member, visited the Respondent's premises where they met with Erney and Meisner. 23/ At the outset, Meisner a member of the Iron Workers since 1952, had asked Schifano how he could withdraw from the Union. In response, Schifano tele-
10 phoned his office, and relayed the inquiry to John Zito, the Iron Workers' secretary-treasurer, who, in turn, outlined the relevant procedures to Meisner. 24/

During that meeting, Erney admitted having received the Iron Workers' September 17 telegram to the Respondent but declined Schifano's request that
15 he sign a recognition agreement on behalf of the Iron Workers, explaining that although he was aware that authorization cards had been signed by his employees, he required time to consult with his attorney. When Schifano requested another meeting, Erney again asked for an opportunity to speak to
20 his lawyer after which he would communicate with Schifano. Erney expressed concern that increased labor costs involved in working with unionized labor had not been taken into account when the Respondent had bid on a firehouse job on which it was then working. An immediate requirement by the Iron
25 Workers that the Respondent pay those increased costs, including contributions to the Iron Workers' several funds, would so increase the Respondent's overhead on the job as to cause it to lose money. Schifano replied that payments into the Union's funds and the possibility of deferring them were matters for negotiation. Erney wanted to know what the contract would cost the
30 Company. As Schifano departed, after receiving a tour of the premises, he requested an early meeting, observing that both Erney and Meisner had been involved with the Iron Workers at GLG Iron Works and the Union was not new to them.

Schifano testified that on September 23, at about 10:30 a.m., he and
35 Hernandez returned to the Respondent's premises for a second meeting, bringing with him, at Erney's request, duplicate copies of three documents, which served as the basis for negotiations. These documents, included the standard independent contract between the Iron Workers and the industry, which had expired on June 30, a set of union proposals for a new contract sent to the
40 industry in May, and a stipulation between the Iron Workers and some companies that had become effective after July 1. This stipulation extended the standard independent contract from July 1, 1975 to June 30, 1976, with certain

45 23/ Schifano had known Erney and Meisner since at least 1971, when Schifano had briefly worked for GLG Iron Works where Erney and Meisner were also employed.

24/ This conversation was confirmed by Zito who testified that Meisner, after following the procedures conveyed by Zito during their conversation,
50 had received a withdrawal card from the Iron Workers, dated October 31.

specific modifications.

Schifano testified that on receiving his copy of the foregoing documents, Erney again stated that his concerns were economic in nature. In accordance with Schifano's suggestion that the documents provided be
5 reviewed section by section to determine areas of agreement and disagreement, Erney, who had not previously seen the documents, reviewed them with Schifano and Hernandez, discussing each proposal as reached. 25/

During that meeting, the parties reached agreement with respect to
10 provisions relating to the appropriate bargaining unit, a provision requiring approval of the contract by the International Union, union recognition, union security and checkoff of dues, overtime pay, the number of paid holidays per year, 26/ one of the four subprovisions relating to reporting pay and/or allowed pay, a no-strike and no-lockout clause, the terms of
15 plant visitation by union representatives, leaves of absence, nondiscrimination clauses, union use of a bulletin board on the Respondent's premises, provisions relating to safety and health, a prohibition on the payment by the Respondent of piece, bonus or contract work done in the shop, 27/ a provision prohibiting the Respondent from utilizing its shop employees in
20 erection, field fabrication or construction work, paydays, 28/ a saving clause whereby the parties agreed to renegotiate any provision of the contract subsequently found to be unlawful, job classifications and rest periods.

25 During the September 23 meeting, the parties did not agree to the preamble 29/ hours of work, the date on which the extra holiday agreed to,

30 25/ Although Meisner was present throughout, Erney conducted the principal review and discussion on behalf of the Employer.

26/ Schifano testified that during their first bargaining session, the Respondent agreed to an additional holiday besides those set forth in the recently expired collective-bargaining agreement. However, the parties
35 could not agree as to the specific dates on which the extra holiday should be observed.

27/ The Union desired this provision to insure that all work done in the shop shall be paid at not less than the hourly wage rate specified in the contract.

40 28/ This provision included a requirement that the Respondent, for the first time, maintain a timeclock. Erney agreed to this proposal after Schifano had assured him that it was beneficial for the Respondent to have such proper records. The Union required this provision as contributions to its various funds were based upon the hours of work done in the shop and records were needed for such computations.

45 29/ Erney did not understand the preamble at the time and wanted to read it again.

as noted above, would be observed, certain other aspects of reporting and/or allowed pay, grievance and arbitration, 30/ seniority, 31/ the Respondent's participation in the industry-wide vacation fund, 32/ sub-contracting of work and wages rates.

5 As the meeting ended, at about 3:30 p.m., Schifano expressed his satisfaction that the progress had exceeded his expectations. He requested that another meeting take place as soon as possible. Erney announced that, in the interim, that he would consult with his attorney with respect to
10 clauses that he did not understand and which had been left open and asked Schifano to call him again to establish a new meeting day.

15 The next meeting, scheduled originally for September 29 was reset at the Respondent's request to the morning of October 6.

20 The October 6 meeting, too, was attended by Erney and Maisner for the Respondent and by Schifano and Hernandez for the Iron Workers. At the outset, Erney again asked what the economic package was going to cost. Schifano suggested that noneconomic matters be disposed of before approaching the economic provisions. Schifano then requested and received information as to the Respondent's current wage scales and its position as to the various employee classifications. The parties continued their review of the previously considered documents. 33/

25 30/ Although Erney, according to Schifano, had agreed to all of the proposed language of the grievance and arbitration provisions, he refused to include such a provision in any contract until he knew who the shop steward was going to be, citing past experiences with irresponsible
30 stewards. Schifano declined to allow the Respondent to have a voice in this matter. Accordingly, there was no agreement with respect to that provision.

35 31/ Although the Respondent agreed to seven subparagraphs of the seniority proposal, including a clause relating to promotion, the Respondent requested and received time to further read three additional subparagraphs before agreeing to the entire provision.

40 32/ The Respondent agreed to grant paid vacation time on a sliding scale on a schedule based upon years of service as proposed by the Union, but declined to contribute to the Local 455 Industry Vacation Fund, from which employees in the industry generally received their vacation money, as the Respondent preferred to directly pay its own employees their vacation pay. Accordingly, the provisions of the vacation proposal that related to the industry vacation fund were left open.

45 33/ During the bargaining sessions of September 23 and October 6, both Schifano and Erney took notes. However, the Respondent's representatives never initialed their approval of any adopted clauses on any of the documents before them.

At the October 6 bargaining session, the Respondent, for the first time, also agreed to the Iron Workers' proposals concerning the preamble, an hourly wage rate for McGovern but not for other employees, and that Meisner, as a supervisor, would no longer perform unit-type work. The Iron Workers representatives indicated a willingness to enter into a 3-year contract but there was no agreement on this.

Items that were not resolved during this meeting included hours of work, grievance and arbitration, 34/ certain reporting and allowance pay provisions, participation in the industry vacation fund, the subcontracting of work, the wage rate to be paid the mechanic and the apprentice and employer contributions to the various funds set forth in the Iron Workers' contract. 35/

The October 6 meeting, ended with an understanding that Schifano would put together a series of prorated figures pursuant to which the Respondent could gradually, over a period of 3 years, defer its contributions to the various funds. Although no new date was set for the next meeting, Schifano was to call the Respondent as soon as he had computed the schedule and figures for the prorated deferred payments.

Schifano testified that on or about October 8, two days after the above-meeting, while visiting the plant to deliver the computed figures, he learned from McGovern that the Respondent had laid off Coli. Schifano thereafter mentioned Coli to Meisner on two occasions. However, all that Meisner would tell him was that Erney was not there. 36/

On October 14, Schifano telephoned Erney and informed him that he was ready with the package, asking that a meeting date be set. Erney replied that he no longer believed that Schifano represented the men. Schifano asked how he could say that after they had been through so much. Erney answered that he had retained counsel and that that was all he was going to say, repeating his disbelief that Schifano still represented the men. There was no further conversation.

At the trial, Erney was called as a witness by both the General Counsel and the Respondent during their respective cases in chief. When called by the General Counsel, Erney testified that in mid-September, he had received a telegram from the Iron Workers demanding recognition. He also averred that a few days later, when Schifano visited his office, Erney

34/ Erney, opposed by Schifano, continued to withhold his consent to the inclusion of grievance and arbitration provisions in the contract until he knew who the shop steward would be.

35/ These funds covered pension, welfare, vacation, apprenticeship and training, annuities and sick leave.

36/ The complaint does not allege that Coli's layoff in early October was violative of the Act.

5 had told Schifano that he had received his telegram but had no time to talk to him. Schifano had agreed to return at another time. Erney related that Schifano had returned twice thereafter but that essentially the same conversations had ensued, Erney having told Schifano on each occasion that he had had no time to talk with him and requesting that he come back. Each time Schifano agreed.

10 Later in the proceeding, as the Respondent's witness, Erney expanded his testimony as to the extent of his dealing with Schifano, testifying that on or about September 23, Schifano had visited Erney's office and asked whether he had received a telegram to which Erney had replied in the affirmative. However, when Schifano asked Erney to sign up with the Iron Workers, Erney had replied that Schifano did not have the majority support of the employees in his shop. Erney told Schifano that he knew 15 this as the day after Schifano had been to the plant (September 15), McGovern had told Erney that he had declined Schifano's request to sign an authorization card for the Iron Workers. Erney related that he also had told Schifano that John Frick also had come to him on September 16 with the information that Schifano had been in the plant and that he (Frick) 20 had given his name and address to Schifano so that the Iron Workers might send him information concerning that Union, but that he did not sign an authorization card. Erney did not know whether Coli had signed a card on September 15, as they had not discussed the matter. As McGovern, Frick and Coli were the only three persons employed in the shop at that time, it 25 was Erney's position that the Iron Workers had never obtained majority status. The visit from Schifano consumed approximately 10 minutes, as Erney and Meisner were so busy they did not have time to talk to him.

30 On about September 30, Schifano returned to the shop with a manila envelop from which he drew a document identified as the recognition agreement. Inside the envelop was a copy of the Iron Workers' proposed collective-bargaining agreement, which he threw on Erney's desk telling him to read and sign it. Erney responded by again telling Schifano that he did not represent the men in the shop. The two men then engaged in general conversation and even had a cup of coffee together. During this visit, Meisner 35 ran in and out of the office as the Company was busy at the time. After about an half hour, the conversation ended because of the press of business, with Schifano telling Erney that he would get in touch with him at some other time.

40 Erney flatly denies that the Respondent had ever recognized or negotiated for a new collective-bargaining agreement with the Iron Workers, or made notes of discussions with Schifano, or that he had engaged in other activities attributed to him by Schifano during alleged bargaining sessions. 37/

45 37/ It is undisputed that the Respondent did not sign the recognition agreement or complete a collective-bargaining agreement with the Iron Workers.

2. Credibility Resolutions

After reviewing the foregoing, I credit the testimony of Schifano, that the Respondent had recognized the Iron Workers as the bargaining representative of its employees in the unit found appropriate herein, and that on September 23 and October 6, the Respondent had engaged in negotiations with the Iron Workers for the purpose of arriving at the terms of first collective-bargaining agreement. In so concluding, it is noted that the testimony of Schifano was generally consistent and convincingly detailed. Schifano clearly related in itemized form the areas of contractual agreement and discord, the surrounding discussions and stated concerns. Various collateral aspects of his testimony were supported by other witnesses. An example, the Iron Workers' financial secretary, Zito, corroborated that Meisner had asked about a procedure through which he could withdraw from the Union. So too, McGovern had agreed with Schifano as to the substance of their September 15 meeting, and Schifano had known the name of Steinberg, the Respondent's landlord, who was present for a portion of the October 6 meeting. 38/

Erney, on the other hand, has not been credited. The description of his meeting with Schifano, to which he testified when called by the General Counsel, differed materially from that given when called as a witness by the Respondent, 39/ although in each case he contended that the Iron Workers had been denied recognition. Erney's credibility was also adversely affected by the fact that he had recently pleaded guilty to a crime involving moral turpitude. 40/

Accordingly, from the credited evidence it is found that the Respondent recognized the Iron Workers on about September 19 and negotiated with that Union on September 23 and October 6 with respect to the terms of a collective-bargaining agreement. It is further found that such recognition was withdrawn by the Respondent on or before October 14, when as will be discussed below, the Respondent executed a collective-bargaining agreement

38/ Erney did not refer to Steinberg's presence at any of the meetings. As it is not likely that Schifano could otherwise have know Steinberg's identity, the reference to Steinberg by Schifano lends additional credibility to Schifano's testimony.

39/ In Erney's initial account, he testified that he had been too busy to speak to Schifano at all. However, in subsequent testimony, he related that they had had a substantial conversation lasting over an half hour and that Schifano had brought in documents.

40/ Specifically, on March 25, 1975, Erney pleaded guilty in the Criminal Court of the City of New York, County of Kings, to having violated Section 155.25 of the New York State Penal Code. Section 155.25 reads as follows:

Petty Larceny

A person is guilty of petty larceny when he steals property. Petty larceny is a Class A misdemeanor.

with the Teamsters, effective from October 14, 1975, to October 5, 1978, covering employees in the unit found appropriate herein. This contract contains a union-security clause conditioning the continued employment of the Respondent's unit employees upon their Teamster membership after a 30-day grace period, and a provision for the checkoff of union dues.

5 The parties agree and I find that the contract between the Respondent and the Teamsters has been enforced in all of its terms including the foregoing union security and checkoff provisions from October 14, when executed, to date. 41/

10

3. Analysis and Findings

From the credited evidence, it has been found above that on about September 19, the Respondent voluntarily recognized and agreed to bargain with the Iron Workers. 42/ It was also found that on September 23

15 and October 6, the Respondent and the Iron Workers met and entered into extensive negotiations concerning a collective-bargaining agreement, at which times, virtually all of the proposals were considered and many were accepted in agreement. Before a contract could be finalized, the Respondent unilaterally withdrew recognition from the Iron Workers and executed a

20 collective-bargaining agreement with the Teamsters under circumstances which will be more fully discussed, infra.

On these facts, I find that the Respondent's conduct in withdrawing recognition from the Iron Workers at a time when that Union was the lawfully

25 recognized representative, and before the bargaining relationship, to which it had agreed had a reasonable time to function, violated Section 8(a)(5) and (1) of the Act. 43/

In addition to the unlawful withdrawal of recognition from the

30 Iron Workers, found above to be meritorious, the complaint also alleges that the Respondent had further violated Section 8(a)(5) of the Act by executing, maintaining, and enforcing the collective-bargaining agreement with the Teamsters. 44/ However, as the principal refusal to bargain alleged in this matter was the Respondent's conduct withdrawing recognition

35 from the Iron Workers, and as the remedies herein will be the same, no

41/ The record reveals that since the execution of the collective-bargaining agreement with the Teamsters, the Respondent has employed other employees

40 in addition to McGovern and Frick in the relevant unit. Presumably, such employees during their tenure with the Respondent were made subject to the union security and checkoff provisions of that agreement. As noted, however, Coli had been laid off before the Respondent signed the collective-bargaining agreement with the Teamsters.

45 42/ As found above, the Iron Workers as of September 15 had the actual support of two of the three members of the relevant unit.

43/ Clark-Sprague, Inc., 181 NLRB 622; Jem Mfg. Inc., 156 NLRB 643; T.C. Worthy Wholesale, Inc., 159 NLRB 1700.

44/ See General Counsel's Exhibit No. 1 (e) paragraphs 12 and 20.

useful purpose would be served by a determination as to whether the execution of the Teamsters' collective-bargaining agreement, constituted a separate violation of Section 8(a)(5) of the Act. 45/

5 D. The Alleged Unlawful
 Assistance to the Teamsters

1. The Teamsters Organizational Campaign

10 The Respondent's president, Erney, testified that he had signed the collective-bargaining agreement with the Teamsters on October 14 only after that Union's delegate, Steve Silverman, had shown him authorization cards signed by a majority of the Respondent's shop employees. 46/

15 However, apprentice John Frick, who had signed a Teamsters authorization card at the same time as McGovern, testified that while the authorization cards were being signed, the Respondent's employees, including Frick and McGovern, were being called in to Erney's office by the Teamsters' representatives. He related that at the time that he and McGovern signed their Teamsters' authorization cards, Erney and Meisner were in the same
20 room of the office at a distance of about 10 feet. 47/ Frick could not recall the date on which he had signed his Teamsters' authorization card, but related that it took place 1 or 2 weeks after he had personally asked Schifano for the return of his Iron Workers' authorization card and may have occurred, also, after he wrote the October 14 letter with the same
25 request.

 McGovern testified that he had signed his Teamsters authorization card approximately 1 month after his September 15 refusal to sign an Iron Workers' card. McGovern's card for the Teamsters had been signed after two
30 organizers, including Steve Silverman, approached him in the Respondent's shop and told him that they had a majority of the men signed up. He recalled that he and Frick had accompanied the two Teamsters representatives to the Respondent's office where they showed Frick and McGovern authorization cards that reportedly had been signed by four of the Respondent's employees. The
35 Teamsters officials told the two employees that these cards constituted a majority and gave them the right to be the employees' bargaining representative. McGovern then signed the card. 48/ Although McGovern cannot accurately recall whether he actually signed the card while he was still in the office

40

45/ The execution, maintenance and enforcement of the collective-bargaining agreement between the Teamsters and the Respondent, alleged in the complaint as violations of Section 8(a)(1), (2) and (3) of the Act, will be considered below in the context.

45 46/ At that time, in mid-October, as noted, the Respondent employed other shop employees in addition to Frick and McGovern.

47/ At that time, Frick and McGovern were the only two employees in the office.

48/ At all times material herein, including the time of the hearing, McGovern also continued to be a member in good standing of the Iron Workers.

or back in the shop area, he did remember that while he was in the office on that occasion with Frick and the Teamsters organizers, Meisner, too, was present, although he was at the other end of a large room. He could not recall if Erney was also present at the time.

5

2. The Execution of the Collective Bargaining Agreement by the Respondent and Teamsters

Erney, who denied having seen Teamsters cards being signed, testified that on or about October 8, Silverman had come to his office, introduced himself as a representative of Local 810, Teamsters, and informed Erney that he represented a majority of the Respondent's shop employees. In response to Erney's request for proof, Silverman listed the men who were working for the Respondent at the time and produced five authorization cards, announcing that these were the men who had signed cards for the Teamsters. Erney then compared the signatures on the authorization cards with those in the Respondent's payroll records.

After this card check, Silverman asked whether the Teamsters would be granted recognition and whether he could speak to the employees. Erney replied that Meisner would be back the next day, asserting a need to speak with his partner.

On the following day, Silverman delivered a copy of the proposed contract to Meisner and Erney. After Erney and Meisner had studied the proposed contract for 2 or 3 days, consulting with Silverman and others on questioned items, they indicated their willingness to sign the Teamsters agreement. Accordingly, on October 14, pursuant to appointment, Erney and Meisner visited the Teamsters' offices, where final questions were asked and answered, changes initialed and the agreement was executed.

About an hour and half or 2 hours later, Silverman visited the shop and spoke to the Respondent's employees in the absence of Erney. Silverman, thereafter, gave Erney a list of the names of employees who, as a committee, had signed the contract. 49/

35

3. Analysis and Concluding Findings

The credited evidence reveals that on about October 14, after granting voluntary recognition to the Iron Workers and conducting two negotiating sessions with that Union, but before the terms of a collective-bargaining agreement could be fully settled, the Respondent signed a contract with the Teamsters. In advance of executing this agreement, the Respondent had permitted the Teamsters to solicit support among its employees during working hours, even in the Respondent's office in the presence of members of management.

45

49/ Neither Meisner nor any representative of the Teamsters testified during this proceeding.

50

th t: In Newport Division of Wintex Knitting Mill, Inc., 50/ it was noted

5 Under Board law established in 1945 in Midwest Piping Supply Co., Inc., 63 NLRB 1060, and followed for three decades, Novak Logging, 197 NLRB 805; Inter-Island Resorts, Ltd., d/b/a Kona Surf Hotel, 201 NLRB 139, it is an unfair labor practice for an employer to recognize one of two or more competing unions while a question of representation is pending before the Board by virtue of the filing of a representation petition with the Board.

15 The Respondent, recognizing that the Board has thus far adhered to its Midwest Piping doctrine, nevertheless argues in its brief for a favorable decision contending that the Midwest Piping doctrine, "should be strictly construed and sparingly applied," citing cases where the Midwest Piping doctrine has been rejected by certain courts. 51/

20 As noted, this is not a straight Midwest Piping case, for the violation herein is more strongly grounded than had there been merely an outstanding question concerning representation involving two or more rival unions. In the instant case, the question concerning representation had already been resolved in favor of the Iron Workers when the Respondent first recognized the Teamsters. 52/

50/ 233 NLRB No. 195 (JD 4)

51/ See Suburban Transit Corp., 203 NLRB 465, enf'd denied 499 F. 2d 78 (C.A. 3, 1974), cert denied 419 U.S. 1089, on remand 218 NLRB No. 185, enf. denied ____ F. 2d ____ 92 LRRM 3054 (C.A. 3, 1976); N.L.R.B. v. Swift & Company, 294 F. 2d 285 (C.A. 3, 1961); Playskool, Inc., 195 NLRB 560, enf. denied 477 F. 2d 66 (C.A. 7, 1973), were among cases cited by the Respondent where the Midwest Piping doctrine was not enforced. However, in citing cases such as N.L.R.B. v. Hudson Berland Corp., 495 F. 2d 1200, cert. denied 419 U.S. 897 (1974); N.L.R.B. v. Mid-Town Service Co., 425 F. 2d 665 (1970); Welch Scientific Co. v. N.L.R.B., 340 F. 2d 199 (1965) and N.L.R.B. v. National Container Corp., 211 F. 2d 525 (1954), the Respondent also has recognized that among other courts, the U.S. Court of Appeals for the Second Circuit in whose geographic jurisdiction the instant case arose, has approved the application of the Midwest Piping doctrine.

52/ See Florida Automatic Sprinkler Contractors Association, 199 NLRB 1151, 1158.

Although, as noted by the Respondent in its brief, the Board's Midwest Piping doctrine has in fact, been rejected by certain courts, it is clear that the Board has continued to adhere to this doctrine. 53/ I see nothing in this record that would warrant a finding for the Respondent. Under the Board's decisions, the Respondent clearly had no right to recognize the Teamsters under the circumstances herein, and that by so doing, it unlawfully encouraged membership in that Union, thereby rendering it unlawful assistance.

Inasmuch as the Respondent could not validly afford recognition to the Teamsters, it necessarily follows that the negotiation of a contract with the Teamsters was also unlawful and that this contract, void ab initio, should be set aside. It is also concluded for the foregoing reasons that the Respondent on October 14, violated Section 8(a)(3) and (1) of the Act, by recognizing and signing a contract containing a union security provision with the Teamsters. 54/

In addition, noting that Frick had signed a tainted card on behalf of the Teamsters during working hours, in the Respondent's office, in the presence of the Respondent's principal officials, I must presume further that Frick's attempted revocation of his Iron Workers card did not proceed on his own initiative, but was a result of the Respondent's unlawful concurrent assistance to the Teamsters. For this reason, no effect has been given to Frick's effort to revoke his Iron Workers authorization card. 55/

IV. The Effect of the Unfair Labor Practice Upon Commerce

The activities of the Respondent set forth in section III, above, occurring in connection of the operations of the Respondent described in section I, above, have a close, intimate and substantial relationship to trade, traffic and commerce among the several states and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

53/ See, for example, Traub's Market, Inc., 205 NLRB 787, 788, fn. 3, where the Board ruled as follows:

We find inappropriate the Administrative Law Judge's citation of N.L.R.B.v. Swift & Company, 294 F. 2d 285 (C.A. 3), because we have previously noted our respectful disagreement to the general position on this issue of that and other Courts of Appeals. Moreover, in Suburban Transit Corp., 203 NLRB No. 69 we adopted without change the decision of another Administrative Law Judge which set forth in full reasons for declining in particular to follow the Swift decision.

54/ Florida Automatic Sprinkler Contractors Association, supra; Suburban Transit Corp., supra.

55/ Quality Markets, Inc., 160 NLRB 44, 45-46.

V. The Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I will recommend that it cease and desist therefrom and take certain affirmative actions designed to effectuate the policies of the Act.

Having found that the Respondent unlawfully assisted and supported the Teamsters by recognizing it as a collective-bargaining representative of its shop employees, and by extending to the said employees the terms of a collective-bargaining agreement containing a union security provision requiring membership in the Teamsters as a condition of employment, notwithstanding the fact that the Respondent had but recently granted voluntary lawful recognition to the Iron Workers, I will recommend that the Respondent be ordered to cease recognizing the Teamsters as the collective-bargaining representative of its shop employees, to cease giving effect to the October 14, collective-bargaining agreement and to reimburse the said shop employees for all fees, dues and other monies that they had been required to pay to the Teamsters by reason of the enforcement of its agreement with the Teamsters, dated October 14, together with interest thereon at the rate of 6 percent per annum, to be computed in the manner set forth in Seafarers International Union of North America, Great Lakes District, AFL-CIO. 56/

Although, as found above, the Respondent has unlawfully refused to bargain with the Iron Workers, the appropriateness of the bargaining order requested by the General Counsel must be considered in the light of the fact that on the last day of the hearing, McGovern was the only remaining employee still employed within the relevant unit. 57/ The General Counsel does not allege that any employee had been terminated or laid off in violation of the Act.

However, in view of the decision in N.L.R.B. v. Crispo Cake Cone Company, Inc., 58/ I find that a bargaining order is warranted as the Respondent has not met its burden of proving that this was not a temporary reduction but was one of a permanent nature. The Respondent in that case employed but two employees in the relevant unit at the time of the hearing, and it had been stipulated that one of these employees was about to leave the Respondent's

56/ 138 NLRB 1142; Airmatics Systems Division of the Mosler Safe Company, 209 NLRB 71, 81

57/ See Luckenbach Steamship Co., 2 NLRB 81, 193-194 (1936), where the Board first held that a unit of one employee is inappropriate for purposes of collective bargaining and refused to issue a certification for such unit. Also see Parklane Hosiery Co., Inc., 207 NLRB 991, supplementing 203 NLRB 597, where the Board, upon the motion of the General Counsel, reconsidered and revoked a bargaining order originally issued as it was discovered during the compliance stage that, for legitimate economic reasons, the Respondent had reduced the size of the unit to but a single employee. The Board noted that in the circumstances of that case, it would not effectuate the policies of the Act to require bargaining.

58/ 464 F. 2d 233 (C.A. 8, 1972) enf'g 190 NLRB 352.

employ. However, there, as in the instant case, at the time recognition was requested three employees had been employed in the unit, the Employer customarily had operated with more than one unit employee and there was no contention that the unit size had been reduced by unlawful conduct. The Board, as quoted with approval by the U.S. Court of Appeals, held as follows:

Plainly, the burden of proving that this was not a temporary reduction but was one of a permanent nature was on the Respondent. If such a reduction was other than temporary, the Respondent could have, and should have, presented evidence that the reduction was permanent. Although Shubert testified at length, he neither contended nor suggested that the Respondent's office clerical complement would not immediately or in the immediate future be restored to its normal three-employee complement. Under these circumstances, the possibility that only one office clerical employee might be at work temporarily, pending new hires, would not destroy the appropriateness of the unit, because a temporary decrease in employee complement, even if it occurs, does not reduce the unit to a single-employee unit. For these reasons, we find, in agreement with the General Counsel, that the Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to bargain with the Union as the duly designated collective-bargaining representative of the office clerical employees. We also find that the issuance of a bargaining order herein is appropriate as to the office clerical employee unit employees.

Upon the basis of the foregoing findings of fact and upon the entire record in the case, I make the following:

Conclusions of Law

1. The Respondent, Emco Steel Inc., is an employer engaged in commerce and in operations affecting commerce within the meaning of Section 2(6) and (7) of the Act.

2. Local Union No. 455, International Association of Bridge Structural and Ornamental Iron Workers, AFL-CIO, and Local 810, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, are labor organizations within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees employed by the Respondent at its Brooklyn, New York, place of business, excluding all office clerical employees, professional employees, guards, watchmen and supervisors, as defined in Section 2(11) of the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. On September 15, a majority of the employees in the above-described unit, designated the Iron Workers as bargaining representative to represent them in collective bargaining with the Respondent regarding wages, hours, and other terms and conditions of employment, and, on or before September 23, the Iron Workers requested and received recognition from the Respondent as the exclusive collective-bargaining representative of the employees in the above-described unit.

5. By refusing to bargain with the Iron Workers on October 14, and thereafter, the Respondent violated Section 8(a)(5) and (1) of the Act.

6. By entering into a collective-bargaining contract with the Teamsters, containing a union security provision, on October 14, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1), (2) and (3) of the Act.

7. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record in this proceeding and, pursuant to Section 10(c) of the National Labor Relations Act, as amended, I hereby recommend the following: 59/

ORDER

The Respondent, Emco Steel Inc., its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Recognizing Local 810, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, as the representative of its production and maintenance employees in the appropriate unit described below, for the purpose of dealing with it concerning wages, hours of employment, or other terms and conditions of employment, unless and until such labor organization shall have been certified by the Board as the exclusive representative of such employees. The appropriate unit is:

All production and maintenance employees employed by the Respondent at its Brooklyn, New York, place of business, excluding all office clerical employees, professional employees, guards, watchmen and supervisors, as defined in the Act.

(b) Giving effect to the collective-bargaining agreement with Local 810, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, dated October 14, 1975, or to any modification, extension, renewal or supplement thereto, provided, however, that nothing contained in this Decision and Order shall require the Respondent to vary or abandon any wages, hours, seniority or other substantive feature of its relationship with its production and maintenance employees established in the performance of such agreement, or prejudice the assertion by its employees of any rights they may have thereunder.

59/ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order, and all objections thereto shall be deemed waived for all purposes.

(c) Giving effect to any checkoff authorization executed by its employees in the afore-described unit in favor of Local 810.

5 (d) In like or related manner, interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following affirmative action designed to effectuate the policies of the Act.

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(a) Upon request, bargain collectively in good faith with the above-named labor organization as the exclusive representative of its employees in the above-described unit with respect to rates of pay, hours of employment and other terms and conditions of employment, and, if an understanding is reached, embody such understanding in a signed agreement.

15

(b) Withdraw and withhold all recognition from Local 810, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, or any successor thereto, as the collective-bargaining representative of any of its production and maintenance (shop) employees for the purpose of dealing with it concerning grievances, labor disputes, rates of pay, hours of employment, or other terms and conditions of employment, unless and until the Board shall have certified Local 810, Teamsters, as such representative.

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(c) Reimburse its present and former production and maintenance employees in the unit described above for all fees, dues, and other monies they have been required to pay to Local 810, Teamsters, as a condition of employment by reason of the Respondent's enforcement of its collective-bargaining agreement, dated October 14, 1975, whether or not pursuant to checkoff authorizations executed by the said employees in favor of that union, together with interest at 6 percent per annum computed in the manner set forth in the section of this Decision entitled "The Remedy."

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(d) Preserve and, upon request, make available to the Board or its agents for examination and copying, all payroll and other records necessary to analyze and compute the amount of the reimbursement due under the terms of this Order.

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(e) Post at its plant, located at Brooklyn, New York, copies of the notice marked "Appendix." 60/ Copies of said notice, on forms provided

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60/ In the event that the Board's Order is enforced by a Judgment of a United States Courts of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

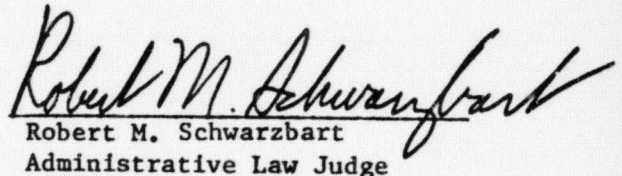
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by the Regional Director for Region 29, after being duly signed by the Respondent, shall be posted by it for a period of 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director for Region 29, in writing, within 20 days from the date of the receipt of this Order, what steps have been taken to comply herewith.

IT IS ORDERED that any allegations of the complaint, which have not been sustained be dismissed.

Dated, at Washington, DC


Robert M. Schwarzbart
Administrative Law Judge



NOTICE TO EMPLOYEES



POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD AN AGENCY OF THE UNITED STATES GOVERNMENT

After a trial in which all sides have presented evidence, it has been found that we have violated the National Labor Relations Act in certain respects. To correct and remedy these violations, we have been directed to take certain actions and to post this notice.

WE WILL NOT recognize LOCAL 810, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, and the collective-bargaining representative of our production and maintenance (shop) employees, unless and until the Board shall certify it as such representative.

WE WILL NOT require as a condition of employment that our production and maintenance (shop) employees become or remain members of LOCAL 810, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA.

WE WILL NOT give effect to the collective-bargaining agreement signed with the above-named labor organization, dated October 14, 1975, or to any modification, extension, renewal, or supplement thereto, or to any checkoff authorizations in favor of the above-named union. However, nothing herein requires this Company to vary or abandon any wage, hour, seniority, or other employee benefits established in the performance of that agreement, or prejudices the assertion by our employees of any rights they may have thereunder.

WE WILL, upon request, bargain in good faith with LOCAL UNION NO. 455, INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS, AFL-CIO, as the exclusive representative of all our employees in the bargaining unit described below with respect to rates of pay, hours of employment, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees employed by Emco Steel, Inc., at our Brooklyn, New York, place of business, excluding all office clerical employees, professional employees, guards, watchmen and supervisors, as defined in the Act.

WE WILL reimburse each of our present and former production and maintenance (shop) employees in the above-described unit for all fees, dues, and other monies unlawfully extracted from them pursuant to the aforementioned agreement with LOCAL 810, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of rights guaranteed them by the National Labor Relations Act.

EMCO STEEL INC.
(Employer)

Dated _____ By _____
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 16 Court Street, Fourth Floor, Brooklyn, New York, 11241 (Tel. No. 212 - 666-5386).

467a

DECISION AND ORDER OF THE NATIONAL LABOR
RELATIONS BOARD DATED JANUARY 13, 1977
227 NLRB No. 148 (pp. 467a-469a)

MFP

D-1982
Brooklyn, N.Y.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

EMCO STEEL INC.

and

Case 29-CA-4645

LOCAL UNION NO. 455, INTERNATIONAL
ASSOCIATION OF BRIDGE, STRUCTURAL
AND ORNAMENTAL IRON WORKERS, AFL-CIO

and

LOCAL 810, INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA

Party in Interest

DECISION AND ORDER

On September 2, 1976, Administrative Law Judge Robert M. Schwarzbart issued the attached Decision in this proceeding. Thereafter, General Counsel and Respondent filed exceptions and supporting briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, ^{1/}

^{1/} The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. Standard Dry Wall Products, Inc., 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

and conclusions of the Administrative Law Judge and to adopt his recommended Order as modified herein.^{2/}

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge as modified below and hereby orders that the Respondent, Emco Steel Inc., Brooklyn, New York, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order as modified:

Substitute the following for paragraph 1(d):

"(d) In any other manner interfering with, restraining, or coercing employees in the exercise of their rights to self-organization, to form labor organizations, to join or assist Local Union No. 455 (Ironworkers) or any other labor organization; to bargain collectively through representatives of their own choosing; to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection; or to refrain from any and all such activities except to the

^{2/} Because the unfair labor practices here strike at the very heart of the Act, we shall modify the recommended order by requiring Respondent to cease and desist from "in any other manner" interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Sec. 7 of the Act. Springfield Dodge, Inc., 218 NLRB 1429, fn. 2 (1975), and N.L.R.B. v. Entwistle Manufacturing Company, 120 F.2d 532 (C.A. 4, 1941).

extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment, as authorized by Section 8(a)(3) of the Act."

Dated, Washington, D.C. January 13, 1977

Betty Southard Murphy, Chairman

John H. Fanning, Member

John A. Penello, Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

COURT OF APPEALS
SECOND CIRCUIT

LOCAL 810 INTERNATIONAL BROTHERHOOD OF
TEAMSTERS CHAUFFEURS WHAREHOUSEMEN AND
HELPERS OF AMERICA,

Petitioner,

- against -

NATIONAL LABOR RELATIONS BOARD,
Respondent

Index No.

Affidavit of Service by Mail

STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

I, Robert L. Martinez, being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at 234 East 33rd Street; New York, New York; 10016 That on the 2nd day of May, 1977, deponent served the annexed

upon Elliott Moore ^{1) Dan Kaye ATG}
NLRB ^{2) Alan Pearl} Deputy Assoc. Gen'l Counsel attorney(s) for

in this action, at 1717 Pennsylvania Avenue, N.W.
Washington, D.C.

Appendix
1/16 Court, Brooklyn *2/350 J. W. T. 20570* *Archie. N.Y.*
purpose by depositing a true copy of same, enclosed in a postpaid properly addressed wrapper in a Post Office Official Depository under the exclusive care and custody of the United States Post Office Department, within the State of New York.

Sworn to before me, this 2nd
day of May, 19 77

[Signature]
Robert L. Martinez

ROBERT T. BRIN
NOTAR, U. S. State of New York
No. 31 04:0950
Qualified in New York County
Commission Expires March 30, 1977